

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re ) Case No. 14-31229-SGJ15  
MTGOX CO., LTD., ) Dallas, Texas  
a/k/a MTGOX KK, )  
Debtor. ) April 1, 2014  
1:38 PM

TRANSCRIPT OF STATUS CONFERENCE (DOC. 1), MOTION FOR EXPEDITED  
HEARING (DOC. 28), MOTION TO COMPEL DEPOSITION TESTIMONY  
(DOC. 39), MOTION TO APPROVE NOTICE PROCEDURES (DOC. 48)  
BEFORE THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE COURT: Please be seated. All right, we will now  
2 begin our settings in the MtGox Company, Ltd. case, number  
3 14-31229. Let's start by getting appearances from counsel in  
4 the courtroom first.

5 MR. PARHAM: Good afternoon, Your Honor. David  
6 Parham and John Mitchell from Baker & McKenzie, on behalf of  
7 MtGox.

8 THE COURT: Okay. Good morning -- afternoon, I  
9 should say.

10 MR. PHELAN: Robin Phelan for -- we're local counsel  
11 with Mr. Woodrow here and Mr. Kitei, for the class-action  
12 plaintiffs in Chicago.

13 THE COURT: Okay. Anyone else in the courtroom?  
14 All right, we have several persons on the telephone;  
15 some of --

16 MS. LAMBERT: I'm sorry, Your Honor. Lisa Lambert  
17 for the --

18 THE COURT: Oh.

19 MS. LAMBERT: -- U.S. Trustee.

20 THE COURT: Ms. Lambert, okay.

21 We have several persons on the telephone; some of  
22 them are in listen-only mode. But if you want to make an  
23 appearance and speak today, you may do so at this time.

24 MR. ENGEL: Your Honor, this is Larry Engel. I'm a  
25 partner at Morrison & Foerster in San Francisco. My pro hac

1 petition is pending before the Court now. And I'd like to  
2 address this Court for CoinLab, if that would be permitted.

3 THE COURT: All right, I have seen your paperwork  
4 and, yes, I give you permission.

5 Anyone else --

6 MR. ENGEL: Thank you, Your Honor.

7 THE COURT: Anyone else on the phone wish to appear?

8 MR. TOWNSEND: This is Roger Townsend from Breskin  
9 Johnson & Townsend, calling in Seattle. I'm counsel for  
10 CoinLab in the pending litigation in the Western District of  
11 Washington in Seattle, and I'm available to the Court if you  
12 have any questions about that litigation.

13 THE COURT: All right. Thank you, Mr. Townsend.

14 Anyone else?

15 All right, I'm going to ask counsel in the courtroom,  
16 please make sure, when you speak today, you speak into the  
17 microphones. Since we have people on the phone, they cannot  
18 hear you unless you are right in the microphone.

19 All right, well, let me start today by announcing  
20 what we do and what we do not have set for hearing. There  
21 have been a lot of pleadings filed and so there may be some  
22 confusion, so let me start by addressing that. First, we have  
23 a status conference. People will recall that originally we  
24 had a hearing set today on MtGox's request for this Court to  
25 issue an order for recognition regarding the Japanese civil-

1 rehabilitation proceeding. But MtGox's purported foreign  
2 representative, Mr. -- is it pronounced [CAR-pa-lay] or --

3 MR. PARHAM: I've always pronounced it [CAR-pa-less].  
4 But if [CAR-pa-lay] -- I mean, he's French, so you may be  
5 right.

6 THE COURT: Okay, you didn't take French in high  
7 school, apparently.

8 MR. PARHAM: I didn't take French in high school,  
9 so --

10 THE COURT: All right. I'm --

11 MR. PARHAM: -- you may be right.

12 THE COURT: I'm going to say [CAR-pa-lay]; I think  
13 that may be the pronunciation.

14 Well, anyway, he asked this Court a week or two ago  
15 to continue the April 1st hearing on the petition for  
16 recognition, to May 6th. So I granted that continuance, but  
17 we went ahead and held this setting as a status conference.  
18 So we're going to start today with our status conference,  
19 because certainly I have some questions -- since this is my  
20 first time to preside over a hearing in this case, I have some  
21 questions about what's going on in the Japanese proceeding,  
22 what's going on with the company, what we envision for the May  
23 6th hearing as far as time estimates and contested issues,  
24 et cetera.

25 So we'll start with the status conference. Second,

1 we have set today what I think is a simple administrative  
2 matter regarding notice. The debtor has asked for a ruling on  
3 the form and manner of notice, who's going to be served and  
4 how, regarding the May 6th recognition hearing.

5 And then last, we have a couple of more contested  
6 matters today regarding Mr. Phelan's clients, which I'll call  
7 the Greene plaintiffs if that's okay. The Greene plaintiffs  
8 have filed a request to take a deposition of Mr. Karpeles here  
9 in the U.S. prior to the May 6th hearing, and so it appears  
10 that might be contested. There might be issues regarding the  
11 scope of discovery, whether a 2004 examination is appropriate  
12 versus a more traditional deposition regarding the issues to  
13 be tried on May 6th. So that'll be the third thing we roll  
14 into today.

15 And then last but not least, we also have the Greene  
16 plaintiffs' request for an expedited hearing on their motion  
17 to modify Judge Hale's provisional relief. For that matter,  
18 we are not having a substantive hearing; we are going to hear  
19 why the Greene plaintiffs think they need modification -- or  
20 need the Court to consider modification of the provisional  
21 order prior to May 6, and we're going to figure out are we  
22 going to have a substantive hearing on that between today and  
23 May 6.

24 I will note I see that the CoinLab people, in the  
25 last twenty-four hours, have filed joinders in the Greene

1 plaintiffs' motion wanting discovery and wanting modification  
2 of the provisional-relief order. I technically have not set  
3 their matters for hearing, their joinders for hearing, but  
4 obviously they're a party-in-interest and I will let them  
5 speak to the merits of what the Greene plaintiffs have asked  
6 for.

7 So, hopefully everyone is clear how we're going to  
8 proceed. So with that, Mr. Parham or Mr. Mitchell, I don't  
9 know who is going to speak, but let's roll to our status  
10 conference.

11 MR. PARHAM: Sure.

12 THE COURT: Okay?

13 MR. PARHAM: Thank you. Okay. Well, and in fact  
14 it's good, because what the Court had suggested you wanted to  
15 hear is exactly what I felt like would be appropriate for the  
16 status conference, knowing it's your first time and it's  
17 somewhat of a unique proceeding in many ways.

18 But as the Court knows, the application for civil  
19 rehabilitation was filed in Tokyo on February the 28th, just a  
20 little bit over a month ago. And with the filing of that  
21 petition, the court in Tokyo entered a series of orders; one  
22 of the orders effectively is like our automatic stay; it stays  
23 creditor actions against MtGox's assets. The court also  
24 appointed a supervisor, and the supervisor is -- and an  
25 examiner, who -- it's the same person, Mr. Koyabashi (sic).

1           The supervisor's role is a bit unique. During  
2 this -- at least to our system; obviously not to theirs.  
3 During this period of time up until a decision's made as to  
4 whether or not the case will go into civil rehabilitation,  
5 which is like a reorganization or what they would refer to as  
6 a bankruptcy, which is like a liquidation -- during this  
7 period of time, the debtor remains in possession of its  
8 assets; it's a debtor-in-possession. They cannot engage in a  
9 number of transactions, which are very similar to our 363. So  
10 in other words, if they want to do any kind of a transaction  
11 outside of the ordinary course of business, for example,  
12 retain Baker & McKenzie in this manner, the supervisor has to  
13 consent and, generally speaking, depending on what exactly it  
14 is, he may have to get a court order. Particularly if he's  
15 going to pay any money out, he has to get a court order, I  
16 believe, on an outside-the-ordinary-course transaction.

17           So during this period what we have is we have a  
18 company that's under supervision, although it remains, as I  
19 said, in possession of its assets and in control of its  
20 business, and we have an examiner in place who is doing an  
21 examination. The examiner was originally scheduled to report  
22 back to the court in Tokyo on March 28, which is why initially  
23 we wanted the April 1st recognition hearing. Late last week  
24 that got continued. And so now the report is due May 9; and  
25 frankly, it's due, I think, to the complexity of the matters



1 that he's got to examine. This is, you know, no  
2 straightforward simple task when you're dealing with virtual  
3 currency and a company of this nature.

4 THE COURT: Okay, let me just back up. As I  
5 understand it, there is always something like -- I think of it  
6 as almost a gap period in an involuntary.

7 MR. PARHAM: Um-hum.

8 THE COURT: There's always this time frame, after the  
9 Japanese proceeding is commenced, where you automatically have  
10 a supervisor/examiner appointed to look at whether the company  
11 should be allowed to go forward, either in a rehabilitation or  
12 a liquidation; that's just an automatic -- always the process?

13 MR. PARHAM: I believe it is automatic.

14 THE COURT: Okay.

15 MR. PARHAM: Now, it may be in this case it's a  
16 longer process for --

17 THE COURT: Okay.

18 MR. PARHAM: -- for various reasons. But I think  
19 that the filing of the application for civil rehabilitation  
20 does not, like it does in our system, automatically result in  
21 a case.

22 THE COURT: Um-hum.

23 MR. PARHAM: There has to be a subsequent hearing  
24 where the court takes that up and considers those issues.

25 THE COURT: Okay. And can you tell me what the

1 standards are that must be met to either do an order yes  
2 you're going forward in rehabilitation or an order this is  
3 liquidation or, I guess, dismissal?

4 MR. PARHAM: Yeah, I can't tell you with -- precisely  
5 what that court --

6 THE COURT: Um-hum.

7 MR. PARHAM: -- will be looking at.

8 THE COURT: Okay.

9 MR. PARHAM: But in general, I think it will depend  
10 (a) on whether a reorganization is viable --

11 THE COURT: Okay.

12 MR. PARHAM: -- whether you get into -- and what I  
13 don't know is whether you get into weighing relative degrees  
14 of recovery and the like. But I think that in this case at  
15 least, the issue's going to be is there a company that can be  
16 reorganized, and that will probably depend on a couple of  
17 issues; one would be the success that the company has in this  
18 interim period, essentially trying to fix the issues or make  
19 itself more secure as an exchange, to prevent these kinds of  
20 issues in the future. Another issue would be whether or not  
21 they can find a sponsor, because what the company is looking  
22 for -- and they've had several expressions of interest -- is a  
23 party to come in and essentially sponsor, like we would have a  
24 plan sponsor, to sponsor by the exchange or sponsor the  
25 rehabilitation.

1 THE COURT: Okay.

2 MR. PARHAM: And depending on what that transaction  
3 looked like, I guess any range of possibilities could exist.  
4 I mean, you might not need a rehabilitation, or you might.

5 So I think that is going to be really the issue for  
6 the Tokyo court -- it may not -- is, is a reorganization  
7 viable. And --

8 THE COURT: There's a hearing on May 9th or the  
9 report is due May 9th?

10 MR. PARHAM: Well, the report -- as I understand it,  
11 the report is made to the court on May 9th.

12 THE COURT: Okay. Okay.

13 MR. PARHAM: Now, and again, that is a date they  
14 could move. Hopefully they will be concluded by then. And I  
15 know they're trying to get to that point.

16 So that is -- May 9th right now in Japan looms as a  
17 significant date. And this period leading up to May 9th is a  
18 critical period, because (a) you got to see if you can fix and  
19 solve and understand the problems that happened, and (b)  
20 you've got to see if you can -- if you're going to be able to  
21 restructure and reorganize.

22 There are several investigations ongoing. I mean,  
23 obviously the company is investigating what happened with the  
24 missing bitcoins. The supervisor is conducting his -- or  
25 examiner is conducting his investigation into what happened.

1 And the company has requested that the Tokyo Police also  
2 investigate the theft of the bitcoins. And in fact, the  
3 company has turned over to the Tokyo Police copies of all the  
4 servers and all the computer information. It's not clear  
5 whether the police will take it up and go forward; the  
6 company's hopeful it will. But that is an investi -- with the  
7 hacking and all, that's the -- that is a request that the  
8 company has made.

9 So one of the questions that --

10 THE COURT: So a report has been made to the Tokyo  
11 Police; we don't really know what they're doing to follow up.

12 MR. PARHAM: Um-hum.

13 THE COURT: But then the supervisor, I guess, has  
14 forensic types going in, doing his own investigation?

15 MR. PARHAM: Yeah, the supervisor is conducting his  
16 own investigation; he has hired a Tokyo accounting firm --

17 THE COURT: Okay.

18 MR. PARHAM: -- on the financial side. On the  
19 technical side, they are looking -- well, the last I heard was  
20 last week and they had interviewed several forensic types to  
21 do a forensic examination. I haven't heard that they have  
22 settled on it. It's apparently a fairly limited number of  
23 entities that could do it. And that's ranged from -- well,  
24 they've looked, for example, at name-brand type, American  
25 accounting firms and others. And so that's -- that search was

1 going on last week.

2 THE COURT: Okay.

3 MR. PARHAM: Obviously, that kind of a search is  
4 beyond probably the qualifications of most counsel --

5 THE COURT: Um-hum.

6 MR. PARHAM: -- certainly.

7 THE COURT: I would think.

8 MR. PARHAM: So -- and that's -- so those  
9 investigations are going on, they're looking for a sponsor,  
10 all of which kind of leads up to what will happen on May 9.  
11 There is at this point no claim procedure in Japan; that would  
12 come later. And so, in fact, the message posted on the MtGox  
13 Web site is that once there is -- a decision's been made as to  
14 how and where and when -- you know, all claims, that that  
15 would be posted on the Web site in Tokyo. But at this point,  
16 I think it's significant that -- particularly given the nature  
17 of the relief requested, that the claims process has not yet  
18 commenced in Japan.

19 THE COURT: Okay.

20 MR. PARHAM: And that, I think, would be pretty much  
21 our report.

22 THE COURT: All right. Well, let me -- and this may  
23 ultimately be a question more for your client representative  
24 at some future point maybe. I guess I'm trying to get a feel  
25 for what's going on at the company right now. I mean, you've

1 explained there's kind of this dual debtor-in-possession  
2 concept --

3 MR. PARHAM: Uh-huh.

4 THE COURT: -- and supervisor/examiner, and you've  
5 explained that investigations are ongoing. But what is up and  
6 running, and what is not? And I guess I read somewhere there  
7 were thirty-two employees at the parent level, not at the  
8 debtor level. I mean, are those people still working, or are  
9 they still basically shut down?

10 MR. PARHAM: Yeah, well, it's both.

11 THE COURT: Okay.

12 MR. PARHAM: First of all, with respect to the  
13 employees, the employees are essentially retained by Tibanne,  
14 which is the parent, but all their work is at MtGox, for  
15 MtGox. And there're contractual arrangements, as I understand  
16 it, between MtGox and Tibanne. So whether they're contract  
17 employees -- it's a different circumstance than we typically  
18 see, but that's how that has been structured.

19 My understanding is that they are working. A lot of  
20 the effort, obviously, is to try and determine what happened  
21 and to fix the program such that they can restart the  
22 exchange. At the present time, there is an ability for  
23 customers to log onto the Web site and then see their  
24 balances. There is a qualification, because I think the  
25 accounting with all this has lagged and so it's -- they say

1 themselves the numbers may not be precise -- exactly precise.  
2 But the exchange itself is not operating. You cannot go on  
3 the exchange and trade bitcoin. You cannot go on the exchange  
4 and buy and sell and the like.

5 So in a sense, yes, they are -- there're people  
6 there, they're working, but the company is not operating in  
7 the fashion that it was before the incident.

8 THE COURT: How are these people getting paid?

9 MR. PARHAM: You know, I don't know the answer to  
10 that. I don't know if they are getting paid by MtGox or if  
11 they're being paid by Tibanne. It -- you know, I'm --

12 THE COURT: I mean, the --

13 MR. PARHAM: I'm surmising it's MtGox is paying them.

14 THE COURT: -- the company is not making revenue and,  
15 I guess --

16 MR. PARHAM: Right.

17 THE COURT: -- hasn't been for a couple of months.

18 MR. PARHAM: Right.

19 THE COURT: How much traditional cash does the  
20 company have right now?

21 MR. PARHAM: You know, I --

22 THE COURT: Or I guess y'all call it fiat cash in  
23 pleadings.

24 MR. PARHAM: From its real name as opposed to bitcoin  
25 name.

1 THE COURT: Okay.

2 MR. PARHAM: You know, I don't know the answer to  
3 that question. My understanding is that they had -- the  
4 number that was given to me was several million dollars, but  
5 I'm not sure. I wouldn't want to hazard a guess as to how  
6 much cash they have versus what may be customer cash and the  
7 like.

8 THE COURT: Okay. Well, I have a few more questions;  
9 I may just wait and see if this otherwise comes out. But let  
10 me -- and actually, I'm quite sure this is probably going to  
11 come out later in the discussion of discovery. Mr. Karpeles,  
12 I read, is in Taipei, Taiwan. Is that still --

13 MR. PARHAM: No, he's in Tokyo. He's in Tokyo.

14 THE COURT: Oh, he is in Tokyo now?

15 MR. PARHAM: He's in Tokyo, yes.

16 THE COURT: Okay. I guess it was just offered as  
17 some of --

18 MR. PARHAM: We had offered --

19 THE COURT: -- neutral site --

20 MR. PARHAM: Yeah, we --

21 THE COURT: -- for discovery.

22 MR. PARHAM: There was an offer of a deposition in  
23 Taipei that would be by videolink, and that's basically  
24 because it's difficult to take depositions in Japan. And so  
25 the idea was to do a videolink deposition with him and,



1 frankly, in our offices in -- out of our offices in Taipei.

2 THE COURT: Okay, but he --

3 MR. PARHAM: But, no, he is in Japan.

4 THE COURT: -- he is still --

5 MR. PARHAM: All of the management and workers -- and  
6 really it's just pretty much just -- Mr. Karpeles is the  
7 manager -- or the main manager certainly -- it's all Japan;  
8 it's all in Tokyo.

9 THE COURT: Okay. And as far as -- again, I know  
10 this was discussed some at the hearing before Judge Hale and  
11 continues to be discussed in some of the pleadings; the assets  
12 in the U.S., and the assets specifically in Dallas, are what?

13 MR. PARHAM: Okay. There is information -- the  
14 backup information through our servers is on servers that are  
15 in Dallas.

16 THE COURT: Okay.

17 MR. PARHAM: And in our papers yesterday we filed a  
18 supplemental declaration of Mark Karpeles that had, in fact,  
19 the invoices with SoftLayer that show the servers as being in  
20 Dallas. They are rented by Tibanne; the servers are rented by  
21 Tibanne.

22 THE COURT: Um-hum.

23 MR. PARHAM: But they're used solely, as I understand  
24 it -- or at least from the companies' perspectives, by MtGox.

25 THE COURT: Okay. So there're backup servers in

1 Dallas. And what about other assets in the U.S.?

2 MR. PARHAM: Well, and there's a reference, I think,  
3 in the application, to cash deposits, or somewhere I saw a  
4 reference to cash deposits. The deposit, I think, that was  
5 referred to is -- there was money that was seized by  
6 Department of Homeland Security a while back.

7 THE COURT: Five million?

8 MR. PARHAM: Five million or so, yes.

9 THE COURT: Fiat cash?

10 MR. PARHAM: Fiat cash, right.

11 THE COURT: Um-hum.

12 MR. PARHAM: And so the company referred to it as a  
13 deposit. I don't think, technically, we would refer to it as  
14 a deposit. I think we have a claim -- and we're trying to get  
15 the money back from Homeland Security, but I don't really view  
16 that as a deposit like a bank deposit. It's not clear we're  
17 going to -- you know, that's a matter that's under discussion  
18 with the Department of Homeland Security as to whether we get  
19 it back.

20 So we have that. We have a claim in the CoinLab case  
21 for, again, a little over five million dollars; it relates to  
22 customer monies that we say should have been transferred to  
23 Japan and instead were used in CoinLab's operations.

24 THE COURT: Okay. So no U.S. bank accounts at this  
25 time?

1 MR. PARHAM: There's no U.S. bank account that we're  
2 aware of.

3 THE COURT: Where was the five million that was  
4 seized?

5 MR. PARHAM: It was with an entity that essentially  
6 acted like PayPal: Silk Road.

7 THE COURT: Okay.

8 MR. PARHAM: And it was a transmitter; it's a place  
9 where U.S. people could deposit money and it would be  
10 transmitted to --

11 THE COURT: Silk Road, is that what you said?

12 MR. PARHAM: Um-hum.

13 THE COURT: Okay. I've read about them.

14 All right, well, so that's the overall status, I  
15 guess. Why don't we --

16 Ms. Lambert, did you have something --

17 MS. LAMBERT: I think we have some additional status  
18 comments, Your Honor --

19 THE COURT: Okay.

20 MS. LAMBERT: -- but from all of the parties.

21 THE COURT: Okay.

22 MS. LAMBERT: To go back through, Your Honor, there's  
23 some additional events leading to the filing here.

24 THE COURT: Okay.

25 MS. LAMBERT: So as the Court has mentioned, in May

1 of 2013 the United States obtained warrants to seize accounts  
2 at Wells Fargo and to seize Meridian Credit Union accounts;  
3 those are in the United States.

4 THE COURT: Okay, back up. I'm not familiar with  
5 this; if I should be, if it was in the papers, I --

6 MS. LAMBERT: Okay. This is the Department of  
7 Homeland Security's seizure.

8 THE COURT: Okay, you're elaborating on what  
9 happened?

10 MS. LAMBERT: Right.

11 THE COURT: Okay, go ahead.

12 MS. LAMBERT: So the seizure warrants were to Mark  
13 Karpeles individually and Mutum Sigillum. The Meridian Credit  
14 Union accounts -- the seizure was for Mutum Sigillum. On  
15 information and belief, Mutum Sigillum is a subsidiary of  
16 MtGox, although some of the news-report articles indicate that  
17 it's owned by Karpeles. The seizure stemmed from the failure  
18 to register with FinCEN. Then on February 7th --

19 THE COURT: The seizure stemmed from failure to  
20 register what?

21 MS. LAMBERT: With the Financial Crimes  
22 Enforcement --

23 THE COURT: Okay.

24 MS. LAMBERT: -- Network. Its short name is FinCEN.

25 THE COURT: Right.

1 MS. LAMBERT: On February 7th, 2014, MtGox stopped  
2 transactions -- so that was pre-petition and before the  
3 Japanese petition -- and it alleged that 744,000 bitcoins had  
4 been stolen, which at the time was about, I believe, 350  
5 million dollars. And an additional theft of 200,000 bitcoins  
6 was alleged to have occurred to MtGox itself.

7 On February 28th, the Japanese civil rehabilitation  
8 was filed, and the United States shared the Court -- the  
9 trustee shared the Court's question about whether an examiner  
10 is appointed automatically. It's unclear if that's the case,  
11 but it is clear that an examiner would report on whether the  
12 entity should be converted to Chapter 7 or a liquidation-type  
13 proceeding, what we could call Chapter 7.

14 THE COURT: Um-hum.

15 MS. LAMBERT: And on March 7th, so about a week after  
16 being in the Japanese proceedings, MtGox finds the missing  
17 bitcoins -- that's also three days before this proceeding was  
18 filed -- the 200,000 that were the MtGox bitcoins, not the  
19 700- that were the clients' bitcoins. So those 200 -- and  
20 there's some differential in the number; it might be 180-, it  
21 might be 220,000, but approximately 200,000 bitcoins were  
22 found, and they were in an offline old-format wallet --

23 THE COURT: Yeah.

24 MS. LAMBERT: -- is what they were told.

25 THE COURT: And I'll let you know; I've read pretty

1 much every paper, so I definitely know there are  
2 allegations -- well, not just allegations; admissions of  
3 massive amounts of missing bitcoin, and then some shows up in  
4 an old wallet.

5 MS. LAMBERT: Right.

6 THE COURT: And I'm still trying to get my head  
7 around all the technology here, what's the difference between  
8 a secured vault and a wallet, and customer account and -- I'm  
9 sure one day --

10 MS. LAMBERT: We all are.

11 THE COURT: -- one day I will, hopefully, completely  
12 comprehend that, but --

13 MS. LAMBERT: Okay. But the point is this was an  
14 offline wallet that had not been subject to discovery. I  
15 mean, the whole point was it was not found and then all of a  
16 sudden money starts coming online -- and this is not disputed;  
17 Mr. Karpeles acknowledges this -- allegedly to make it more  
18 secure. But now it's in online wallets in small increments.  
19 And then on March 10th this case is filed; so, right before  
20 this case is filed.

21 So -- and then on March 26, MtGox post an  
22 announcement on its Web site, and the announcement in -- the  
23 announcements on MtGox's Web site are in English as well as in  
24 Japanese. And the announcement says that they're cooperating  
25 with the Japanese Police and that they have provided the

1 police with the documents.

2 So it's on this background that we come to the part  
3 where we have our discovery discussions. So --

4 THE COURT: Well, I'm going to get to that, but  
5 again, I kind of wanted the beginning intro. Tell me what's  
6 going on in Japan and how this process works and what's going  
7 on with the company. Then we're going to do --

8 MS. LAMBERT: All right --

9 THE COURT: -- we're going to do this administrative  
10 matter of who gets notice and how.

11 MS. LAMBERT: Okay.

12 THE COURT: And then I'm actually going to turn it  
13 over to Mr. Phelan to --

14 MS. LAMBERT: All right, there're --

15 THE COURT: -- make the argument.

16 MS. LAMBERT: -- some aspects that are not totally  
17 related to the discovery, that relate to where we are today,  
18 though. For example, we have the delayed translation of the  
19 Japanese petition. The requirements are that the petition  
20 accompany the filing in the Chapter 15; that did not occur.  
21 We have requested that, and almost --

22 THE COURT: Okay, we've got everything now, right --

23 MS. LAMBERT: No.

24 THE COURT: -- or no?

25 MS. LAMBERT: The exhibits are not translated, to my

1 knowledge, yet.

2 UNIDENTIFIED SPEAKER: That's incorrect, Your Honor.

3 MS. LAMBERT: Okay.

4 THE COURT: Okay, I've got something translated  
5 yesterday. So now they're all done, or no?

6 MR. PARHAM: Your Honor, we're still working on the  
7 exhibits to the application. We filed the application. We  
8 have not yet translated the --

9 THE COURT REPORTER: Speak into the mic.

10 MR. PARHAM: We're still working on --

11 THE COURT: Yeah, could you speak into the mic?  
12 She's --

13 MR. PARHAM: We're still working on translating the  
14 exhibits. We have filed a translated application.

15 THE COURT: Okay.

16 MS. LAMBERT: So the exhibits are very important  
17 because they contain the financial information that is more  
18 schematically described in the petition itself. And so it is  
19 the parties' position -- it's been the parties' position all  
20 along -- that they needed the translated copy of the petition;  
21 it was discussed at every meet-and-confer -- which we'll get  
22 into, but there have been three of them -- and yet we have  
23 been unable to get the translation of the petition for a long  
24 time, and now we still do not have the supporting exhibits.

25 Similarly, at the hearing on the stay, the United



1 States Trustee orally requested the information about the  
2 servers. On returning from that hearing, the United States  
3 Trustee's office sent a request in writing for information  
4 about the servers not just here, but also there were some  
5 allegations that there were some servers in Massachusetts.  
6 These issues were again discussed on the calls.

7 And finally, in response to yet another e-mail, the  
8 United States Trustee received the location of the servers,  
9 and we've never received the invoices. But it's still unclear  
10 whether this information is copied in multiple locations,  
11 whether it's just here, what's contained here. All this is  
12 unknown.

13 So on that background we can shift to the issues in  
14 the discovery disputes, which the United States Trustee  
15 probably had some comments on too.

16 THE COURT: All right.

17 MR. PARHAM: Your Honor, if I can just --

18 THE COURT: Well --

19 MR. PARHAM: -- briefly address a couple of those  
20 comments? I'll be very brief.

21 THE COURT: Okay, very brief, because we're going to  
22 get --

23 MR. PARHAM: I know. I know.

24 THE COURT: -- full-fledged into this topic of  
25 discovery. And again, it's Mr. Phelan's --

1 MR. PARHAM: I understand.

2 THE COURT: -- motion; he'll go first on that.

3 MR. PARHAM: Well, all I wanted to do is just say  
4 that if you stand back and you look at the time line of how  
5 this case got filed, the -- anyway, we have been trying to  
6 catch up in terms of some of these things.

7 THE COURT: Um-hum.

8 MR. PARHAM: That's just some of the translations.  
9 But the Greene action was filed, I believe, on February 27.  
10 The action in Japan was filed on February the 28th. The  
11 Greene plaintiffs had set a motion for basically an effort to  
12 obtain a constructive trust over, and freeze over, U.S. assets  
13 for the day following the day that we actually had our first-  
14 day hearings. So the filing essentially was in response to  
15 that, was in order to get a stay to prevent the U.S. assets  
16 from having a constructive trust imposed over them.

17 So it was hurried. I mean, there's no question that  
18 we were scrambling for a period of several days to get this  
19 thing on file, and it hasn't been on file that long. We are  
20 trying to catch up, but there are things such as the  
21 translations that are trailing.

22 THE COURT: All right. And again, the  
23 translations -- you need, number one, a certified copy of the  
24 decision commencing the foreign proceeding and appointing the  
25 foreign representative, translated in English; a certificate

1 from the foreign court affirming the existence of such foreign  
2 proceeding and the appointment of the foreign representative;  
3 and then in the absence of these, some other acceptable  
4 evidence. We have got those now, or --

5 MR. PARHAM: Well, I think that what we have -- if  
6 you'll give me just one second so I can go through your --  
7 I'll follow your -- along in the Rules.

8 THE COURT: What I remember seeing is something like  
9 an application, a petition to --

10 MR. PARHAM: The petition is the application --

11 THE COURT: Yeah.

12 MR. PARHAM: -- that is filed for the civil  
13 rehabilitation. So we have that. That has been translated.  
14 What has not been translated are some of the exhibits. Most  
15 of the -- or a lot of the information they're referring to in  
16 the exhibits is actually in the text of the application, but  
17 we do not yet have the exhibits translated. The foreign rep  
18 is the representative director of the corporation, and so  
19 that's how we get that one.

20 I think we have, frankly, everything other than -- we  
21 don't have the -- other than we don't have the -- excuse me --  
22 the --

23 THE COURT: What about the various orders? Have they  
24 been translated in English?

25 MR. PARHAM: The orders have been translated. The

1 orders are attached to Mr. Karpeles' declaration on the --

2 THE COURT: Okay.

3 MR. PARHAM: -- first day.

4 THE COURT: Okay. All right. Well, so you're  
5 working on getting all of that; you think you've got most of  
6 it. Let's talk very briefly about the notice.

7 MR. PARHAM: Okay.

8 THE COURT: You have proposed -- somewhere I have in  
9 here the type of notice. Why don't you reiterate what it is  
10 you've proposed.

11 MR. PARHAM: Well, what we're proposing, Your Honor,  
12 is to -- obviously, to the people on the service list, we  
13 would, by U.S. mail -- serve them by U.S. mail or in e-mail.  
14 In terms of the broader audience --

15 THE COURT: And the people on --  
16 Tab 11 in my binder.

17 The people on the service list, that's the Greene  
18 plaintiffs and their counsel, the CoinLab --

19 MR. PARHAM: CoinLab and --

20 THE COURT: -- people and their counsel --

21 MR. PARHAM: The company, the supervisor --

22 THE COURT: The company --

23 MR. PARHAM: -- and its --

24 THE COURT: -- the supervisor --

25 MR. PARHAM: -- its --

1 THE COURT: -- the U.S. Trustee?

2 MR. PARHAM: Yeah. It's relatively limited. What we  
3 would do is -- to the broader audience, is we'd propose three  
4 things: We would propose to --

5 THE COURT: Let me ask this.

6 MR. PARHAM: Okay.

7 THE COURT: Who are the creditors here, other than  
8 the people like CoinLab and the people like Mr. Phelan's  
9 clients, the actual customers who've traded --

10 MR. PARHAM: Um-hum.

11 THE COURT: -- on the Web site? Or there're no  
12 traditional -- there're no bank lenders, there's no secured  
13 lenders, there's --

14 MR. PARHAM: There's no secured debt; there's no bank  
15 lenders. I believe that we are talking about customers.

16 THE COURT: Okay.

17 MR. PARHAM: And --

18 THE COURT: That's it?

19 MR. PARHAM: That's it.

20 THE COURT: No vendors, no landlords --

21 MR. PARHAM: Not in the United States. We'll talk  
22 later, but they're really a Tibanne vendor.

23 THE COURT: Okay.

24 MR. PHELAN: I'm not aware of any other vendors in  
25 the United States at this point.

1 THE COURT: Okay. All right.

2 MR. PARHAM: So we're really talking about customers.  
3 And our propose is really kind of threefold: one would be to  
4 send e-mail to our customers, basically advising them of the  
5 recognition hearing; the second would be to post it on the  
6 MtGox Web site; and the third would be to post on blog,  
7 Reddit, which is frequented by tech users. And we think that  
8 is the --

9 THE COURT: On the blog what?

10 MR. PARHAM: Reddit --

11 THE COURT: Okay.

12 MR. PARHAM: -- R-E-D-D-I-T. We think that is a  
13 manner of service that is probably most likely to reach our  
14 customers. We do have -- the U.S. Trustee has asked that we  
15 also post legal notices in The Wall Street Journal and in the  
16 Financial Times; our preference would not be to do that, for a  
17 couple of reasons: one is cost; two is we just don't think it  
18 would be effective under the circumstances, because our  
19 customers basically are techies and they're going to pay a lot  
20 more attention to the electronic media than they will to the  
21 print media. And to the extent that the print media -- you  
22 know, that they did -- excuse me. To the extent that they did  
23 pay attention to the print media, we would submit that already  
24 the articles, which have been all over the place, much more  
25 prominent than a legal notice about this case and the

1 commencement of this case, would effect -- frankly, are much  
2 more effective in terms of getting to those folks, than a  
3 legal notice.

4 THE COURT: Okay. And how many customers are there?

5 MR. PARHAM: We have heard -- the number that has  
6 been -- that I've heard is 120,000 worldwide.

7 THE COURT: Okay.

8 MR. PARHAM: And there is a significant percentage,  
9 not the most, but I think probably on the order of twenty-five  
10 percent maybe are estimated to be in the U.S.; but that's hard  
11 to tell because people use different online codes and  
12 addresses. So we don't really know with precision where these  
13 folks are is kind of the bottom line. But we're talking about  
14 a significant customer base in terms of size.

15 THE COURT: All right. And so the notice that you  
16 had sent e-mail and post on the Web site, on the blog, it  
17 would be the actual notice filed with the Court: the hearing  
18 will be held on May 6th at such and such time --

19 MR. PARHAM: That would be our proposal, right.

20 THE COURT: -- and deadline for objecting, and --

21 MR. PARHAM: Um-hum.

22 THE COURT: Okay. All right, well, who wishes to be  
23 heard on this notice issue?

24 MS. LAMBERT: The United States Trustee, Your Honor.  
25 This application was filed as the result of discussions with

1 the United States Trustee. And basically, there are only two  
2 causes of action pending in the United States, but there was  
3 also a class action filed in Toronto about a month before --  
4 or a week or two before the Chapter 15 filing here. So it  
5 occurred to the United States Trustee that possibly there were  
6 claimants around the country who would have similar class-  
7 action claims but would not be able to participate in the  
8 Chicago class action, which raises both federal claims and  
9 Illinois state-law claims. And for this reason, the United  
10 States Trustee submitted to them that other parties needed to  
11 receive notice, that they -- and have an opportunity to raise  
12 the same types of issues, because the venue or jurisdiction of  
13 this Court might be relevant to their position.

14 So there are two issues that are remaining: one is  
15 the scope of the advertising, and two is the form of the  
16 notice. The United States Trustee contends that -- and has  
17 requested, as I mentioned, that the advertising occur in The  
18 Wall Street Journal and the Financial Times, and this is  
19 because many of the bitcoin clients are not trading bitcoins  
20 at this point, based on -- they can't at MtGox because MtGox  
21 is closed, but the other thing is that their e-mail addresses  
22 they have changed. So while the press has covered these  
23 issues, the fact that the press has covered them does not tell  
24 the parties that they have rights to come to the Court and  
25 participate in the Chapter 15 adjudication. And that is the



1 issue that the notice would provide.

2           So let's turn to the second issue, which is the form  
3 of the notice. The form of the notice was attached as an  
4 exhibit to your motion and it refers the parties to the  
5 Delaware bankruptcy courts rather than txnb.uscourts. It also  
6 requires that the parties, if they want copies of the  
7 pleadings and do not go on the txnb.uscourts Web site, that  
8 they mail written correspondence to the debtor's counsel. It  
9 also seems to contemplate -- and I think this may have been  
10 unintentional -- that the parties would have to mail any  
11 objections to the law firm both in Chicago and in Dallas,  
12 rather than e-mail or rely on the ECF notice. The Court's  
13 notice also seems to contemplate this for the order setting  
14 the adjudication. And I wanted to clarify that the Court was  
15 still contemplating that we could have ECF notice and we could  
16 provide e-mail copies and objections, rather than mailing,  
17 which backs up the objection deadline by two to three days.

18           So those were the issues that the United States  
19 Trustee had with the proposed notice.

20           THE COURT: All right, anyone else?

21           MR. ENGEL: Your Honor?

22           THE COURT: Yes?

23           MR. ENGEL: This is Larry Engel, Morrison & Foerster,  
24 on the phone.

25           THE COURT: Okay.

1 MR. ENGEL: I have a related issue, if you'll -- if  
2 it's time to hear it, which is the actual timing of the  
3 hearing in relation to the March 9th date -- excuse me -- May  
4 9th date for the Japanese examiner's report. I also have some  
5 comments on the Japanese proceeding and can answer your  
6 questions differently than MtGox's counsel did, when you're  
7 ready to hear that.

8 I apologize for the fact that I'm not there in person  
9 to do this; I know it's awkward for Your Honor, on the phone.  
10 But I do have substantial experience with Japanese insolvency  
11 proceedings and the cross-border issues, as obviously does  
12 Mr. Phalen; we worked together with Judge Mott in the Western  
13 District, in the think3 case, for example, which you may have  
14 heard of, which went to the Japanese Supreme Court.

15 So we have a strong position here for Your Honor to  
16 consider that the hearing in the U.S. for the 15 should follow  
17 rather than precede the examiner's report, and --

18 THE COURT: Okay.

19 MR. ENGEL: -- I can explain why that's the case, if  
20 you're interested.

21 THE COURT: All right, well, I guess this is germane  
22 to the whole subject of the notice procedures.

23 I actually was sort of wondering that myself,  
24 Mr. Parham, when you said that you sought a continuance of the  
25 April 1st setting to May 6th because of the delay from March

1 28. So May 9th, the examiner's report; I wondered is it, by  
2 chance, premature to having a hearing three days before that  
3 report comes out on recognition?

4 MR. PARHAM: Yeah. No, we would agree with counsel's  
5 position that actually this hearing, the recognition hearing,  
6 should follow what happens on May 9th, for the same reason  
7 that we wanted the April 1 hearing to follow the March 28. We  
8 just haven't made the request to adjourn yet, but --

9 THE COURT: Okay. You were coming to that.

10 MR. PARHAM: But we were coming --

11 THE COURT: Okay.

12 MR. PARHAM: -- to that.

13 THE COURT: Okay. Well --

14 MR. PARHAM: And since we're at a status conference,  
15 it's probably appropriate, frankly, to take that up and --  
16 because I do think that what happens on the 9th may well  
17 inform what happens at the recognition hearing. But one thing  
18 you may have a very -- you may have a different appointed  
19 representative; maybe a trustee appointed in Japan, for  
20 example. So it does make sense for the recognition hearing to  
21 follow the 9th; we just haven't made that request yet.

22 THE COURT: All right. Okay, so we're going to have  
23 a discussion in a bit about do we continue the May 6th date  
24 even farther out. But again, I'm trying to stay on track  
25 here. With regard -- let's just focus right now on the form

1 of notice, whether it's May 6th or May something else --

2 MR. PARHAM: Right.

3 THE COURT: -- the human beings proposed to be served  
4 and the manner. Does anyone besides the U.S. Trustee have a  
5 specific point they want to make about that?

6 I'll just ask anyone in the room to tell me -- I  
7 mean, I'm thinking about this request for Wall Street Journal,  
8 Financial Times. I mean, is there any precedent for this? I  
9 mean, we have to remember this isn't like a proof-of-claim bar  
10 date, this is not like major substantive relief; it's just do  
11 we recognize the Japanese proceeding. And I'm sort of  
12 gravitating to thinking that's not appropriate use of dollars,  
13 again, especially where we have techie people.

14 Can anyone tell me; ads in The Wall Street Journal  
15 for notice of a recognition hearing, is there --

16 MS. LAMBERT: Well, Your Honor --

17 THE COURT: -- precedent for that?

18 MR. PARHAM: -- the parties' rights are being  
19 adjudicated in the Chapter 15 adjudication, because they may  
20 contend that there should be no Chapter 15. And --

21 THE COURT: Well, I understand, but I'm just  
22 thinking, in the universe of actions that happen in the  
23 bankruptcy court, is this worthy of spending the --

24 MS. LAMBERT: It's consonant --

25 THE COURT: -- 50,000 dollars, or whatever, for The

1 Wall Street Journal.

2 MS. LAMBERT: It's consonant -- it's 10,000 dollars  
3 for three days, as I understand it.

4 THE COURT: Okay.

5 MS. LAMBERT: For the Financial Times --

6 THE COURT: Precedent? Precedent? I mean --

7 MS. LAMBERT: There's no precedent, but there's not a  
8 lot of these cases. And so -- there's not a lot of cases  
9 where we have a situation where we have --

10 THE COURT: Okay.

11 MS. LAMBERT: -- potential plaintiffs all over the  
12 country.

13 THE COURT: All right. Well, if there's no further  
14 comment, I am actually going to approve the form of notice  
15 proposed by MtGox's counsel. Again, if things develop, if the  
16 Chapter 15 goes forward, if there's even a concurrent case --  
17 I mean, certainly there may be situations where more notice is  
18 potentially going to be required to parties-in-interest. But  
19 I think -- for this notice of hearing on the bankruptcy  
20 court's considering the petition for recognition, I think what  
21 you have proposed is fine, Mr. Parham. But certainly let's  
22 work out the bugs that were mentioned by Ms. Lambert: the  
23 mention of the Delaware court versus the Northern District,  
24 and --

25 MR. PARHAM: Yeah. Right. We have done that. And

1 in fact, we've added -- for example, Mr. Phelan wanted notice  
2 as well, so -- particularly if we're not going to have to  
3 publish it, if other parties want notice of any objections  
4 that are filed, it makes it easier to do. We were trying to  
5 hold the lines --

6 THE COURT: Yeah --

7 MR. PARHAM: -- down to hold down the cost and --

8 THE COURT: -- hard copy, regular-mail --

9 MR. PARHAM: Yeah.

10 THE COURT: -- service to people who've requested --

11 MR. PARHAM: Sure.

12 THE COURT: -- service, to the Greene plaintiffs, to  
13 the CoinLab people --

14 MR. PARHAM: Um-hum.

15 THE COURT: -- to the Japanese supervisor/examiner,  
16 to the U.S. Trustee, to anyone who requests it. But for the  
17 other universe of customers out there, e-mails, posting on the  
18 MtGox Web site, posting on the blog you mentioned, Reddit, I  
19 think that will be sufficient.

20 MR. PARHAM: Once we -- why we don't we -- if I could  
21 suggest, once we essentially get the bugs worked out and  
22 people are happy with the form of notice, if we could upload  
23 the order with the form attached, just so it's clear that this  
24 is what you're approving and --

25 THE COURT: Yes. Yes, that's good.

1 And the comments you made, Ms. Lambert, about e-mail  
2 versus mail, I mean, again, what did you tell me; that they  
3 were required to serve by hard copy?

4 MS. LAMBERT: Correct. This is the issue: there's a  
5 deadline seven days before the hearing, for objections, at  
6 4 o'clock p.m.

7 THE COURT: Okay, they can file it on ECF and serve  
8 electronically the debtor --

9 MS. LAMBERT: And the issue is --

10 THE COURT: -- and --

11 MS. LAMBERT: -- that the order also requires that  
12 the mail copy be received by that deadline, which  
13 constructively backs up the deadline to nine or ten days  
14 before the hearing.

15 THE COURT: No. Let me -- electronic. Electronic  
16 service is appropriate, okay? So Mr. Parham will work that  
17 in.

18 All right, well, now to the discovery. And again, we  
19 are going to circle back to May 6 versus something else, and I  
20 am going to let Mr. Engel --

21 You can come back and give your own version of  
22 Japanese rehabilitation proceedings.

23 But I'm going to turn now to the discovery that the  
24 Greene plaintiffs want, and we'll hear the arguments from  
25 everyone on that.

1 MR. WOODROW: Thank you, Your Honor. Steven Woodrow  
2 for the --

3 THE COURT: Okay.

4 MR. WOODROW: -- Greene plaintiffs.

5 THE COURT: All right.

6 MR. WOODROW: Judge, today the Court should grant our  
7 motion to compel Mr. Karpeles' deposition to occur within the  
8 United States, for two main reasons: first, there's been a  
9 real lack of transparency from Mr. Karpeles with respect to  
10 the facts underlying and supporting his Chapter 15 petition;  
11 and second, requiring several sets of attorneys and their  
12 personnel to fly all the way to Taipei is far less efficient  
13 than simply ordering Mr. Karpeles to come here, particularly  
14 given that he's already come before this Court asking for  
15 relief, he has exclusive knowledge, he is the sole person with  
16 knowledge of the operative facts, and, Your Honor, we've  
17 offered to pay his travel expenses. Ultimately, Your Honor,  
18 Mr. Karpeles seeks all the privileges and accommodations a  
19 foreign representative who has been open, honest and  
20 transparent would readily receive, without demonstrating  
21 openness, honesty or transparency.

22 Turning to my first point, Mr. Karpeles has neglected  
23 to apprise this Court of key facts relevant to his petition.  
24 Your Honor, Mr. Karpeles provided two different stories to the  
25 Japanese court and this Court, with respect to the main U.S.



1 assets. He told the Japanese court that the main U.S. assets  
2 consisted of customer deposits; that is actually, people have  
3 said -- I heard -- I read it somewhere; it's in his  
4 declaration seeking appointment as the foreign representative.  
5 So he swore to that, Your Honor. But then that very same day,  
6 just a few hours later, he told Judge Hale, when seeking  
7 emergency relief, that the main U.S. assets were servers  
8 somewhere in the nebulous Dallas area. We just last night  
9 received some paperwork about these servers, but it's not even  
10 clear that the debtor owns them; it appears that they just  
11 lease space on them.

12 To the extent the debtor is asserting that it's the  
13 data on the servers that's the asset, we have zero information  
14 at this point about that data, Judge. We certainly have no  
15 information to suggest that its value was created from the  
16 five million dollars Mr. Karpeles informed the Japanese court  
17 was the value of the customer deposits. Counsel said that he  
18 believed that the money seized by Homeland Security was from  
19 Silk Road. Our research, Your Honor, shows that two different  
20 seizures took place: one with respect to Dwolla, D-W-O-L-L-A,  
21 and the other 2.1 million, or so, were in Wells Fargo  
22 accounts, both in Mr. Karpeles' name personally and his -- or  
23 MtGox's subsidiary, Mutum Sigillum.

24 So, Judge, we have no information right now about  
25 that; all we have is a discrepancy between what the foreign

1 representative told the Japanese court and what he told this  
2 Court to receive provisional relief.

3 As has already been mentioned, we still don't have  
4 translated exhibits for the Chapter 11 filing, which were due  
5 three weeks ago. This means that we still don't have a list  
6 of assets, the list of creditors, which most, Your Honor,  
7 appear to be outside of Japan; we don't have financial  
8 statements or a list of account holdings; we have no charter-  
9 related companies; and we are lacking the articles of  
10 incorporation. All of that information should have been  
11 provided with the Chapter 15 filing.

12 Counsel has said that they filed the Chapter 15 in  
13 response to my client's motion for a TRO. That motion was  
14 filed on the 4th of March. They had a full week to prepare  
15 the petition. And even if they couldn't get it done by the  
16 15 -- by the date that the 15 was filed, we're a month out  
17 now, and the fact that we still don't have those exhibits puts  
18 us at a disadvantage.

19 Your Honor, two days before the Chapter 15 filing, as  
20 has already been said, Mr. Karpeles apparently discovered  
21 200,000 bitcoins in an old wallet. While 200,000 bitcoins  
22 might sound kind of -- you know, what's the big deal? That  
23 has a street value, a present-day value, Judge, of between 90  
24 to 110 million dollars. And I think that that speaks volumes  
25 as to the type of accounting practices that were going on here

1 and the type of obvious conflict Mr. Karpeles has with respect  
2 to running the company while investigating himself, if he's  
3 going to be uncovering these types of assets, which are  
4 absolutely substantial, in old wallets.

5 THE COURT: Okay, I don't mean to cut you off, but  
6 where do you want to depose them, when, and what would the  
7 scope be? Because you've asked for a 2004 exam, and MtGox's  
8 lawyers say 2004 doesn't apply right now at this juncture of  
9 the Chapter 15, Rule 1018 does; that's more traditional  
10 deposition aimed at the standards that have to be established  
11 at the petition for recognition. So where, when, and what  
12 would the scope be?

13 MR. WOODROW: Yes, Judge.

14 THE COURT: And respond to their argument 2004  
15 doesn't apply.

16 MR. WOODROW: Will do, Your Honor. The reason I was  
17 giving that background is because our overall point, Judge, is  
18 that their proposal to send everyone to Taipei is  
19 unreasonable.

20 THE COURT: Um-hum.

21 MR. WOODROW: Where it might be reasonable with a  
22 transparent, open and forthright foreign representative,  
23 that's not what we have here.

24 THE COURT: So you want --

25 MR. WOODROW: And so that was my point.

1 THE COURT: -- him here. You've even offered to pay  
2 for him to come here.

3 MR. WOODROW: Correct. And we would like --

4 THE COURT: "Here" being Dallas, Texas.

5 MR. WOODROW: "Here" being Dallas, Texas --

6 THE COURT: Okay.

7 MR. WOODROW: -- at some point prior to the  
8 recognition hearing. I would suggest that the deposition  
9 occur before the end of this month.

10 THE COURT: Okay.

11 MR. WOODROW: Your Honor, there were a few questions  
12 from the Court, one being, why 2004? At this point we don't  
13 have sufficient information to know whether or not we're  
14 actually going to contest the Chapter 15. So I can understand  
15 that 2004 might not apply where the Chapter 15 is being  
16 contested, but we don't even have information to allow us to  
17 make that decision yet. In a normal case -- and I put air  
18 quotes around "normal" -- the creditors would have the  
19 translated Chapter 15 petition, would have the exhibits that  
20 contain the information on assets and creditors, from which we  
21 could determine is this a proceeding that we're going to  
22 contest; we would have information regarding the data on the  
23 servers so we know whether or not venue's appropriate. But we  
24 don't have that information right now.

25 So really what we're trying to do -- I'm not fishing

1 to get discovery for my class action, like I've been accused  
2 of, although I appreciate that they think I'd be that clever.  
3 What I really want to know is, is this Chapter 15 appropriate?  
4 And the only person who can answer those questions, Your  
5 Honor, is Mark Karpeles. This was a one-man show. He  
6 controlled everything. He had exclusive access to the bank  
7 accounts. He's the only one who's going to know how many  
8 subsidiaries there are scattered throughout the United States  
9 and what bank accounts they might have. So we need to depose  
10 him.

11 And the idea that we would all fly --

12 THE COURT: Okay, we'll -- okay, I'm going to my  
13 checklist that I'm going to have in front of me on May 6th or  
14 whenever: did we give notice to the right people in the form  
15 I ordered; do we have a petition for recognition that meets  
16 all the technical requirements of Section 1515, you know,  
17 translated documents and all those things; do we have a person  
18 applying for recognition, i.e., Mr. Karpeles, who constitutes  
19 an appropriate foreign representative; does the Japanese  
20 proceeding constitute either a foreign main proceeding or a  
21 foreign nonmain proceeding, and I guess that would entail  
22 looking into the center of main interest, right, and  
23 understanding the activities and what's going on where. And I  
24 guess -- I guess, more big-picture, you could raise the 1506  
25 issue, right, of is something about this manifestly contrary

1 to public policy.

2 So I guess what I'm getting at is -- let me just tell  
3 you what I'm thinking. I'm thinking Messrs. Parham and  
4 Mitchell are kind of right; 2004 probably, technically,  
5 doesn't apply at this juncture. However, a deposition in a  
6 contested matter does apply. I mean, you ought to be able to  
7 take the guy's deposition and ask him on topics germane to  
8 what my checklist is going to be on May 6. Okay? So I really  
9 am trying to -- I'm inclined to say yes. He avails himself of  
10 this Court, by God he is going to get over here. But what are  
11 the subjects we're going to allow deposition on? Okay?

12 So really, tell me what you need to know and why you  
13 think it falls under these Chapter 15 standards.

14 MR. WOODROW: Certainly, Your Honor. Most of them  
15 fall under the COMI factors and venue and whether or not we  
16 have a person applying who constitutes a fair foreign  
17 representative, as well as the catchall policy arguments. The  
18 topics of the deposition would all fall into those parameters.  
19 And what we'd be looking for is information such as where are  
20 the assets in the United States, what data is really on these  
21 servers, what is the value of that data, how is it being  
22 valued, is that data available on other places; there's a  
23 whole line of questioning about that, as it's being heralded  
24 as the main asset in the United States. We do have some  
25 information about servers in Massachusetts; we would want to

1 understand that. Apparently, MtGox or its subsidiary was  
2 using servers in Massachusetts, and that might also contain  
3 data.

4 THE COURT: Okay.

5 MR. WOODROW: We're not sure at this point.

6 THE COURT: So you're going to fully examine him on  
7 what do we have in the U.S. --

8 MR. WOODROW: Yes, or to ask --

9 THE COURT: -- what all is in the U.S.?

10 MR. WOODROW: As it relates --

11 THE COURT: Everything, everything, everything?

12 MR. WOODROW: Correct.

13 THE COURT: You mentioned you're going to examine him  
14 on venue; that's really overlapping with what we just talked  
15 about --

16 MR. WOODROW: Yes, Your Honor.

17 THE COURT: -- do we have assets here, versus no. Is  
18 he a fair foreign representative; that one kind of threw me  
19 off. I mean, he's either a foreign representative as defined  
20 in the Bankruptcy Code, or not. Are you going to, what, try  
21 to go --

22 MR. WOODROW: Perhaps that's --

23 THE COURT: -- something --

24 MR. WOODROW: Perhaps, Your Honor --

25 THE COURT: -- different there?

1 MR. WOODROW: -- it's more tied to the policy  
2 argument of is this the --

3 THE COURT: That's more the --

4 MR. WOODROW: -- individual that we --

5 THE COURT: -- public policy? I gotcha.

6 MR. WOODROW: -- that we should really have here.

7 THE COURT: I gotcha. So you could make that public-  
8 policy argument, and then what are you going to want to delve  
9 into to frame that argument?

10 Again, I don't want to come back in a week or two  
11 with a fight over objections at a deposition.

12 MR. WOODROW: And fair enough, Judge. And it's not  
13 our goal to try to go beyond --

14 THE COURT: Okay.

15 MR. WOODROW: -- the considerations of the Chapter  
16 15. We're really trying to focus on what are the assets in  
17 the United States, where are their employees and creditors.  
18 Only Mr. Karpeles, the current foreign representative, is  
19 going to be able to tell us the actual numbers and where  
20 creditors are. And it does appear that at least a plurality  
21 of exchange members were in the United States. But we don't  
22 have that information yet, and he's the best person to tell  
23 us.

24 So I -- Your Honor, there's nothing on our list of  
25 items that we'd like to ask him about that goes beyond the



1 scope of the Chapter 15. We're not going to get into the  
2 nitty-gritty of what exactly caused the loss of bitcoins and  
3 fiat currency. Although an argument could be made that  
4 they're relevant from a policy standpoint, it's not going to  
5 be the major focus of our inquiry. What we're really tied to  
6 is where are the assets, where are the creditors, what do we  
7 know currently with respect to their holdings, and things of  
8 that nature; focused on the venue and really the COMI factors.

9 THE COURT: Okay.

10 MR. WOODROW: So with respect to whether or not this  
11 occurs under 2004, Your Honor, because he's the foreign  
12 representative, and that provision speaks directly to taking  
13 the examination of the foreign representative, that's why the  
14 motion was set up under 2004.

15 If the Court's more inclined to allow the deposition  
16 under Rule 7030 or some other mechanism -- discovery  
17 mechanism, we're happy to engage in that process. The most  
18 important thing is that we have the examination and that we  
19 don't force everyone to fly to Taipei to do it. That's really  
20 the dispute here.

21 THE COURT: Okay. All right, thank you.

22 Mr. Phelan, you look like you're dying to add  
23 something. Go ahead.

24 MR. PHELAN: I was only going to add one small point,  
25 Your Honor.

1 THE COURT: Okay.

2 MR. PHELAN: And that is that I think the scope of  
3 the examination would also relate to Section 1522(b), which  
4 would be what conditions should the Court put, if any, on the  
5 recognition.

6 THE COURT: Okay. Okay, gotcha.

7 All right --

8 MR. ENGEL: Your Honor --

9 THE COURT: Mr. Engel, is that you?

10 MR. ENGEL: Yes, it is, Your Honor. I don't know  
11 when the right time to speak is, because obviously, I can't  
12 see. But --

13 THE COURT: All right, I'm going to ask --

14 MR. ENGEL: -- I do --

15 THE COURT: I'm going to ask to hear from you now. I  
16 know you filed a me-too joinder. And so what do you want to  
17 say about the discovery?

18 MR. ENGEL: I did. And I'd like to supplement what  
19 you just heard from my friend, Mr. Phelan, about 1522, which  
20 in none of the debtor's papers, did they even mention it. And  
21 it's not just 1522(b), it's also 1522(a) and potentially (d).

22 The issue at the beginning is that the -- it says in  
23 1522(a) that the Court may issue -- may grant relief under  
24 1519 or 1521, and may modify or terminate relief, only if the  
25 interests of creditors and other interested parties, including

1 the debtor, are sufficiently protected.

2 So sufficient protection is a critical issue here in  
3 Chapter 15, including at the recognition hearing level. And  
4 because there are tremendous conflicts of interest here by Mr.  
5 Karpeles. I mean, there needs to be an inquiry into those  
6 conflicts of interest, because that goes to the question of  
7 sufficient protection.

8 And so for instance, I mean, we're talking about the  
9 owner of the parent company here, which you've already heard,  
10 controls all the employees; it owns the servers that they're  
11 using as the basis for jurisdiction. As far as we know, there  
12 are all kinds of avoidable transfers going on between the --  
13 and that have already gone on between the parent and MtGox.  
14 And Mr. Karpeles is the owner of the parent and involved in  
15 that conflict. And he's also, at least considered by many  
16 creditors and perhaps other parties, to be one of the main  
17 suspects in this case.

18 So we have a situation where he's -- he's  
19 investigating himself, basically. And so in order to defend  
20 his declarations under those circumstances, it's essential  
21 that not only he be questioned on everything that's in his  
22 declarations, but also on those conflict issues as well.

23 THE COURT: Okay. Gotcha.

24 MR. ENGEL: And I'd point out, Your Honor, just for  
25 the record, so there's no confusion, because there is no stay

1 as to Mr. Karpeles, and he was supposed to have his deposition  
2 previously taken in the Seattle action, and we expect to take  
3 his deposition again -- or for the first time -- in the  
4 Seattle action, at a rescheduled time in particular, in his  
5 role as to the parent, there will be questions asked on the  
6 subjects in that, as well as other matters relating to that  
7 deposition.

8 So if we have our way, he's going to have to come  
9 here for the Seattle process anyway. So that's just one more  
10 reason for him to be ordered by this Court to come. And we  
11 can deal with all those issues at the same time.

12 THE COURT: All right. Thank you.

13 Well, Mr. Parham or Mr. Mitchell, let me hear from  
14 you. You probably gleaned where I'm leaning from my  
15 comments -- my comment in particular that if he availed  
16 himself of this Court, why shouldn't he come over here. Why  
17 don't you answer that question? If you're opposing him coming  
18 over here -- why should he not have to come over here?

19 MR. MITCHELL: Okay. To be clear, Your Honor -- and  
20 I just want to get this up-front -- and my apologies if it  
21 wasn't clear in our response to the motion -- we are not  
22 opposing the foreign representative being deposed, nor are we  
23 suggesting we will not have the foreign representative here,  
24 in person, to give live testimony and be subject for cross-  
25 examination by parties-in-interest. That's the first thing we

1 put in our response. And I want to make sure the Court  
2 understands we're very clear about that.

3 We suggest that he shouldn't be made to appear here  
4 twice, back-to-back. If you're going to take a deposition and  
5 he's over in Asia, and he's -- this is a critical time leading  
6 up to this final report by the examiner, that he needs to be  
7 there, our suggestion was it would make most sense to have a  
8 deposition via video link and then have him here live, in  
9 person, testifying, subject to cross-examination.

10 And we've never suggested that the foreign rep  
11 wouldn't be here for trial.

12 Now, to be clear also, though, is --

13 THE COURT: Let me ask a basic question. What are  
14 his language skills like?

15 MR. MITCHELL: French, I believe, is his native  
16 language, with broken English. I don't know if you can say  
17 he's fluent in English. But to the extent he is being deposed  
18 via video link or otherwise the Court orders him coming over  
19 here, as well as to the extent he's here, we certainly would  
20 make arrangements for a certified translator, so that would  
21 not be a problem.

22 The other thing, too, Your Honor, is I think we're  
23 kind of putting the cart before the horse. We don't oppose a  
24 deposition of the foreign representative. And you'll note,  
25 I'm saying "the foreign representative" as opposed to

1 Mr. Karpeles -- or [CAR-pa-lay] -- by name.

2 The foreign representative very well could change, as  
3 Mr. Parham said. We may have a trustee put in, effective --  
4 basically, effectively a trustee put in. Or alternatively,  
5 the debtor may choose to replace the foreign representative.  
6 I want to be very clear about that so there's no suggestion  
7 that there is anything tricky going on. I don't want there to  
8 be any surprises. That could happen.

9 THE COURT: Okay. Well, I got a lot of questions  
10 about that.

11 MR. MITCHELL: Okay.

12 THE COURT: And maybe this where I'm going to need  
13 Mr. Engel, Mr. Phelan, my -- I guess people who -- what was  
14 that case before Judge Mott, again?

15 MR. PHELAN: think3, Your Honor.

16 MR. ENGEL: think3 Inc.

17 THE COURT: Okay. I completely forgot about that.  
18 Anyway, how -- okay. How does this happen before even there's  
19 been a supervisor or examiner report? A --

20 MR. MITCHELL: Because it's within the --

21 THE COURT: -- a change in personal representative or  
22 foreign representative?

23 MR. MITCHELL: Because it's up to MtGox to choose who  
24 the foreign representative will be. There's no requirement --

25 THE COURT: Well, who else would it be?

1 MR. MITCHELL: I don't know, Your Honor. There's  
2 a -- they could -- for example, it's not uncommon as I know  
3 Mr. --

4 THE COURT: So Mr. Karpeles could say, I don't think  
5 I want to do this, I think I'll appoint who to do it? I  
6 mean --

7 MR. MITCHELL: He could appoint a representative  
8 here. It could be a lawyer. It could be an accountant. It  
9 could be an individual. The definite -- just a couple of  
10 examples on that, Your Honor.

11 So, for example, it's not uncommon, when there's a  
12 Chapter 15 here in the United States, when there's a  
13 liquidation or other insolvency over in Europe, that's being  
14 run by an accounting firm, to have the accountants of one of  
15 the big four or otherwise --

16 THE COURT: Okay.

17 MR. MITCHELL: -- acting as a foreign representative.

18 THE COURT: Okay.

19 MR. MITCHELL: Totally not uncommon.

20 THE COURT: So right now, that is the decision of Mr.  
21 Karpeles. Is that -- is --

22 MR. MITCHELL: It is.

23 THE COURT: Okay.

24 MR. MITCHELL: It is -- well, it's the decision --

25 THE COURT: All right. So what -- I guess what I'm

1 starting to think ahead on is -- I mean, I don't want to order  
2 today he appears for a deposition on X date, as foreign  
3 representative of MtGox and then he changes and makes someone  
4 else the foreign representative next week, and says okay, I  
5 don't have to appear anymore. He's obviously the person with  
6 the knowledge.

7 MR. MITCHELL: He is, Your Honor. He is the primary  
8 principal. I think he's the -- what's the term in Japan --  
9 the representative director, is the term, I think -- sole  
10 director or representative director, I think, is the Japanese  
11 term. He is the person with the knowledge.

12 THE COURT: Um-hum.

13 MR. MITCHELL: However, but I think what we need to  
14 do is make sure that we're clear, Your Honor, and that is, he  
15 may be the person with the most knowledge with respect to the  
16 assets and operations of MtGox, but that's not what this Court  
17 is going to be evaluating, nor is there any requirement in the  
18 Bankruptcy Code that the foreign representative be the person  
19 with the most knowledge with respect to the assets and  
20 operations.

21 The foreign representative is whoever the foreign  
22 debtor --

23 THE COURT: Okay.

24 MR. MITCHELL: -- chooses --

25 THE COURT: Understood.



1 MR. MITCHELL: -- to represent --

2 THE COURT: So you're saying --

3 MR. MITCHELL: -- in the U.S.

4 THE COURT: It could change before May --

5 MR. ENGEL: Your Honor, on that point, if I may?

6 This is Larry Engel.

7 THE COURT: Okay. I'll hear you in a minute. I'll  
8 hear you in a minute.

9 THE COURT: So you're saying it could change, but  
10 what I guess I'm saying I don't want changed is I don't want  
11 you to treat this like a Rule 30(b)(6) representative and  
12 okay, now the new guy is going to be the person who appears  
13 for a deposition.

14 Clearly, these parties want Mr. Karpeles and think  
15 he's the person with the information on where are the assets,  
16 who are the creditors. Okay?

17 MR. MITCHELL: That's correct.

18 THE COURT: Okay.

19 MR. MITCHELL: But let's be clear on what they want  
20 it for, Your Honor. They may dress it up as if they want it  
21 to challenge this recognition petition, but that's not what  
22 they want it for. I think the joinder for Mr. Engel is  
23 infinitely clear, and he says over and over and over, and I'm  
24 happy to walk the Court through is joinder, he says because I  
25 haven't been able to get Mr. Karpeles as a representative of

1 Tibanne, a nondebtor defendant that he's sued, and because the  
2 individuals in Chicago haven't been able to get Mr. Karpeles  
3 in his individual basis, we want you, Your Honor, to order him  
4 to come here to the United States to sit for a deposition.

5 And they cloak it in Chapter 15, but that's not the  
6 case. And there is no requirement that the person that  
7 testifies at this hearing be the person with the most  
8 knowledge of the assets.

9 If they give us a 30(b)(6) deposition notice, Your  
10 Honor, and outline matters that are relevant to the proceeding  
11 that's going to go forward, we will certainly make that  
12 individual available for a deposition, and if the Court orders  
13 that person to come to the United States, so be it. We think  
14 it's more efficient for the depo to be a video and live  
15 testimony here. Same thing with whoever our foreign  
16 representative is. That person will be here, in court, live  
17 to testify.

18 But what this Court can't do, and if I can make one  
19 point on that, Your Honor, because I think it's germane to  
20 this --

21 THE COURT: Um-hum.

22 MR. MITCHELL: -- what's really going on here, Your  
23 Honor, is the plaintiff are asking you to circumvent 1510 of  
24 the Bankruptcy Code. 1510 of the Bankruptcy Code says, "The  
25 sole fact that a foreign representative files a petition under

1 Section 1515 does not subject the foreign representative to  
2 the jurisdiction of any court in the United States for any  
3 other purpose."

4           You can't read the papers filed by the Greene  
5 plaintiffs or CoinLab, without coming away from their motions  
6 to compel Mr. Karpeles to come here, other than the fact that  
7 they have been frustrated that they haven't been able to  
8 obtain jurisdiction over Mr. Karpeles, in the actions that  
9 they commenced. And so what they're asking you to do is bring  
10 him over here so that they can get testimony from him with  
11 respect to matters not before this Court. And that's an end  
12 run around 1510, Your Honor.

13           THE COURT: Okay. Well, I'm not going to let anybody  
14 play games. I'm not going to let these creditors depose him  
15 through order from me on anything other than the standards  
16 relevant for Chapter 15.

17           MR. MITCHELL: Understood.

18           THE COURT: And that's why I was really pressing the  
19 issue with Mr. Woodrow, what do you want to ask about. Okay?  
20 So I'm not going to issue an order that lets them essentially  
21 do their discovery in the Washington and Illinois actions.

22           But I'm not going to -- I mean, you have to know --  
23 it appears to me, he's wanting to not come over here because  
24 he's trying to avoid service personally on those issues, he's  
25 trying to avoid personal jurisdiction or service. That's what

1 it sounds like.

2 MR. MITCHELL: But -- well, if --

3 THE COURT: I mean, why is it not terribly burdensome  
4 to them -- I mean, a video deposition of a guy who has broken  
5 English, and in Taipei of all places.

6 MR. MITCHELL: Um-hum.

7 THE COURT: I mean, that's just -- he's got to come  
8 over here. He's got to come over here.

9 MR. MITCHELL: And is this Court, though, Your Honor,  
10 saying that Mr. Karpeles has to come over here, or are you  
11 saying the foreign representative has to come over here?  
12 Because there's -- the Code simply says, Your Honor, and I can  
13 pull up the definition -- the Code basically says a foreign  
14 representative has to be any person or body. That's all it  
15 says, and there is no requirement --

16 THE COURT: Well, but --

17 MR. MITCHELL: -- other than he's the anointed --

18 THE COURT: -- isn't it Rule 1018, what I really look  
19 at more than 15-whatever you're looking at?

20 1018 seems to permit discovery in this context. We  
21 have the ability of parties-in-interest -- parties-in-  
22 interest, that's the term used --

23 MR. MITCHELL: Correct.

24 THE COURT: -- to contest a petition for recognition  
25 in Rule 12 -- it's treated like Rule 12. And then we have

1 Rule 1018 that seems to contemplate depositions, discovery,  
2 right?

3 MR. MITCHELL: It does, Your Honor.

4 THE COURT: So that wouldn't be limited to the  
5 personal representative, would it?

6 MR. MITCHELL: That's correct. But if you want to  
7 take the deposition of an individual -- if they want to take  
8 deposition of an organization, they need to issue a 30(b)(6)  
9 notice. No questions. And we'll produce that witness. We'd  
10 like to do it via video. If the Court ordered us to produce  
11 that witness here, we'll do it. Same thing with the foreign  
12 representative.

13 But if they want to go get a specific individual then  
14 they have to go to the country where that individual is in  
15 order to take his or her deposition. And if -- and they can't  
16 simply issue a deposition notice with respect to an  
17 individual, in that individual -- that person's individual  
18 capacity as a director or otherwise of a corporation -- and  
19 then ask the Court to compel him to come to the United States.

20 What they can do is issue a deposition notice under  
21 30(b)(6) of the organization, and we'll produce the  
22 representative. And because this is a recognition hearing,  
23 we'll produce a foreign representative. But with respect to  
24 the individual, though, that they want to target -- and that's  
25 exactly what's going on here -- they're targeting him in his

1 individual capacity -- then they need to go --

2 THE COURT: Oh, okay --

3 MR. MITCHELL: -- overseas to get him.

4 MR. ENGEL: Your Honor --

5 THE COURT: Let me just -- and I'll get to you next,  
6 Mr. Engel. Let me just ask you, you always play straight with  
7 me, Mr. Mitchell -- can you tell me is he going to appear over  
8 here or not for a deposition?

9 MR. MITCHELL: I don't know, Your Honor. Let me  
10 answer you straight up.

11 THE COURT: You don't know?

12 MR. MITCHELL: Okay. Well, but can I answer you  
13 straight up, though?

14 THE COURT: Um-hum.

15 MR. MITCHELL: He's in the process of obtaining  
16 counsel, and he might have actually already gotten counsel. I  
17 don't know if they've appeared. He may or may not appear.

18 But let me also explain too, though, Your Honor, as  
19 well. So with respect to will he or won't he show up, I do  
20 not know. He's getting separate individual counsel. And Your  
21 Honor, with respect to the allegations that have been made, I  
22 don't think Your Honor would say it's necessarily beyond the  
23 realm of reasonableness for an individual, faced with the  
24 allegations that you read in their papers, to consider whether  
25 or not that individual should appear here in the United States

1 or not and what his rights and remedies are and whether or not  
2 the Chicago or the Seattle court have jurisdiction over him as  
3 a foreign national that, from what I understand, has never set  
4 foot in the United States. Just to be clear.

5 And secondly, with respect to the expectations of the  
6 creditors, Your Honor, you can't get on the MtGox Web site  
7 without seeing a lot of Japanese characters. It's a Japanese  
8 company. This isn't a situation, just to be clear, where  
9 Toyota is selling cars and have accelerator problems and  
10 there's class-action claims and then Toyota says, you know  
11 what, sue me in Japan. That's different. It's an established  
12 industry doing business here in the United States.

13 These individuals went to the MtGox Web site, every  
14 single one of these customers went to the MtGox Web site, did  
15 business with a Japanese company, with a less-than-established  
16 industry. I don't know that I have my arms around it. And so  
17 for them to say you need to come over here, I would flip that  
18 around and say, no, no, no, no; you need to go over there.  
19 They affirmatively went to Japan to do business with a  
20 Japanese company, Your Honor.

21 THE COURT: But he filed this case.

22 MR. MITCHELL: In defense -- in --

23 THE COURT: He filed this case.

24 MR. MITCHELL: In response to --

25 THE COURT: They don't want to be in Dallas.

1 MR. MITCHELL: I understand. It's a recognition  
2 hearing of a Japanese company.

3 THE COURT: Um-hum.

4 MR. MITCHELL: It's a recognition hearing for a  
5 Japanese company. This is not a Chapter 11. It's a  
6 recognition hearing for a Japanese company. And it is  
7 absolutely in response to the creditors in Chicago seeking to  
8 impose a constructive trust on an emergency basis over the  
9 assets of the company that are located here in the United  
10 States. There's no place of business in the U.S. but there  
11 are assets located in the U.S.

12 And that is why --

13 MR. ENGEL: Your --

14 MR. MITCHELL: -- the Chapter 15 was commenced. And  
15 you'll notice there wasn't a Chapter 15 commenced in response  
16 to the CoinLab litigation, which had been ongoing a lot longer  
17 than the Chicago litigation. But it was this constructive  
18 trust, and that's why the Chapter 15 petition was commenced.

19 Your Honor, but to also be completely honest, too,  
20 MtGox is evaluating whether or not to choose a different  
21 foreign representative. It is absolutely within their  
22 discretion to do so. There is no standards, there is no  
23 requirement, other than it's a person or a body that has  
24 authority to be the foreign representative. That's the only  
25 standard before the Court.



1           So that's why I wanted to raise it, that that may  
2 happen. That may happen.

3           THE COURT: I understand. But the issue is to me,  
4 they are entitled to discovery, as I read 1018.

5           MR. MITCHELL: They are.

6           THE COURT: And they're entitled to a person with  
7 knowledge. And I don't know who in the heck's going to have  
8 knowledge, but -- I mean, I don't know. Maybe some of these  
9 thirty-two employees of Tibanne have a lot of information in  
10 their brain that I think they're entitled to the guy who is  
11 the hundred percent owner of Tibanne, which is the eighty-  
12 eight percent owner of the debtor, which puts himself out  
13 there as MtGox.

14           Let me -- I'll come back to you.

15           But Mr. Engel, I hear you on the phone, dying to say  
16 something. Let me hear from you.

17           MR. ENGEL: I apologize for my impatience, Your  
18 Honor.

19           THE COURT: Okay.

20           MR. ENGEL: The point that we keep missing here, is  
21 that they put him up, in addition to being the foreign  
22 representative, also as their sole actual declarant, apart  
23 from the factual statements that were made by the lawyers,  
24 which waived the attorney-client privilege; and I doubt they  
25 want to expand on that.

1           So the -- if the declarant, Mr. Karpeles, doesn't  
2     come to the U.S. to defend his declarations, and his  
3     declarations will be stricken, then there's no evidence for  
4     their Chapter 15. And lawyers' statement such as you saw in  
5     the papers in abundance, that sound as if they're facts, they  
6     have to be supported with evidence. These folks don't have  
7     any evidence at the moment, apart from a few factual  
8     statements by the lawyers, which -- the competency of which  
9     and the waiver characteristics of which I'm sure we'll be  
10    debating. But as to their main factual witness, it's been Mr.  
11    Karpeles with his declarations.

12           Now, if they want to withdraw their declarations and  
13    try and substitute other declarations of a whole new witness,  
14    then that affects many things, and, frankly, we'd see that as  
15    just more stalling by Mr. Karpeles; and we all want to get to  
16    the bottom of this.

17           But if -- there's also an issue here, and the reason  
18    we want to know this sooner, as opposed to later, is when you  
19    want to hear it, the Japanese process is actually a little  
20    different than you might surmise from reading the MtGox  
21    papers. The examiner is a much more substantive and important  
22    player in the Japanese process than he's being given credit  
23    for here. And this idea that you can simply substitute in a  
24    new foreign representative on him under these circumstances,  
25    "him" meaning the Japanese examiner, I would dispute. I would

1 also dispute that such a replacement, if not approved by the  
2 examiner specifically, would be able to spend the money that  
3 wouldn't be needed to pay lawyers to come here and act in the  
4 U.S., et cetera.

5 I mean, you're opening up a whole series of problems  
6 if you substitute in a new player at this time. And we would  
7 see that happening as yet one more reason for complaining  
8 about MtGox's delay here, while the U.S. creditors are not  
9 sufficiently protected, going back to the conflict issues and  
10 the 1522 discussion that we had earlier. Which, by the way,  
11 is a direct answer to his 1510 argument, because as Mr. Phelan  
12 reported to you earlier, you may have conditions under 1522(b)  
13 to adequately protect, or sufficiently protect, is the term  
14 that they use in 1522, to adequately -- or sufficiently  
15 protect the U.S. creditors, which require that the foreign  
16 representative be available here in the U.S., and subject to  
17 U.S. discovery and other rights of creditors. That's a  
18 condition to the availability of Chapter 15.

19 There's a concept here, just as there is in the  
20 Bankruptcy Code in Chapter 15, more generally in the  
21 Bankruptcy Code, of benefits and burdens, right. They're  
22 seeking the benefit of Chapter 15 without the burdens.  
23 They're trying to make life easy on Mr. Karpeles, and that's  
24 not what this is about. If he wants to be the foreign  
25 representative, then he has to stand up and take the burdens

1 that go with that. And if he tries to substitute later on  
2 somebody else in, then he's starting a whole new process,  
3 because we're counting on these declarations, and deposing him  
4 with respect to those and cross-examining with respect to  
5 those, and that's a fundamental requirement for there to be a  
6 Chapter 15 here.

7 MR. MITCHELL: Your -- I'm sorry.

8 THE COURT: All right. Going back to something you  
9 said at the beginning, Mr. Engel. Are you saying the examiner  
10 would have to approve -- consent to any replacement of Mr.  
11 Karpeles as the foreign representative?

12 MR. ENGEL: Well, I -- let me say it this way. If I  
13 were in the debtor's position, I would want the consent of the  
14 examiner. I'm pretty clear that he can't spend money on  
15 behalf of the estate, in terms of a new foreign  
16 representative, without the blessing. It's a power of the  
17 purse kind of issue, as opposed to a power --

18 THE COURT: Okay, I got you.

19 MR. ENGEL: -- to act. I also think that the  
20 Japanese examiner has more power to restrain activities by  
21 whoever purports to act as the foreign representative if he  
22 chooses to use that power.

23 So it -- let me say it this way. It may be that Mr.  
24 Karpeles could, if he chose to, replace himself at MtGox with  
25 somebody who would be pictorially the foreign representative,

1 but in terms of the ability of that party to act, that ability  
2 to act could be severely constrained by the examiner, and, in  
3 effect, disable him from acting, including by cutting off his  
4 funds.

5 THE COURT: Okay.

6 MR. MITCHELL: Yeah.

7 THE COURT: Mr. Mitchell.

8 MR. MITCHELL: Your Honor, two points. One, we don't  
9 necessarily disagree with Mr. Engel on the fact that it's more  
10 of the power of the purse right now, and -- with respect to  
11 the appointment of the examiner. So if, let's just say -- not  
12 the examiner, excuse me, the foreign representative. So if,  
13 let's just say, there was an intent to hire an accountant or a  
14 lawyer, somebody here in the United States to be the foreign  
15 representative, and they need a retainer to be paid or  
16 anything else, yes, you probably would have to go back to the  
17 examiner to get that approved. And the examiner may or may  
18 not have to take that to the Court. I don't want to  
19 necessarily get into Japanese law on that. I'm not sure, but,  
20 certainly, the examiner had to approve MtGox sending a  
21 retainer to Baker & McKenzie, and hiring Baker & McKenzie to  
22 represent MtGox in the Chapter 15, and so I would presume that  
23 would be the same for any foreign representative change.

24 I'd like to call the Court's attention to a provision  
25 of the Bankruptcy Code, and that's Section -- and it's the

1 definition of foreign representative. And that's 101(24).

2 THE COURT: Okay.

3 MR. MITCHELL: 101(24) says "The term 'foreign  
4 representative' means a person or body," which is what I was  
5 saying earlier, Your Honor, "including a person or body  
6 appointed on an interim basis authorized in a foreign  
7 proceeding to administer the reorganization or the liquidation  
8 of the debtor's assets or affairs, or to act as a  
9 representative of such foreign proceeding."

10 I'm not here telling you, Your Honor, that there is  
11 an interim appointment, that's not my point. My point is this  
12 though, that the Code contemplates that there could be a  
13 change. Somebody appointed on an interim basis, maybe not on  
14 a final basis. And, in fact, that may happen; there may be a  
15 change. The Code contemplates this. It's not you choose your  
16 foreign representative, and you're stuck with him. It's any  
17 person or body that's authorized to act. It's a very, very  
18 broad standard.

19 Additionally, Your Honor, with respect to Mr. Engel's  
20 suggestion that discovery -- and this goes to the scope of  
21 discovery. My apologies, I've lost my place. It was 1521, I  
22 believe --

23 MR. ENGEL: 22, 1522.

24 THE COURT: 1522(a) and (b).

25 MR. MITCHELL: Okay. It's 22(a) and (b). Okay, my

1 apologies, I could have sworn he said 1521. My apologies  
2 then. Then, Your Honor, I have something to address on 1521.

3 Your Honor, maybe I could sum up this way, and kind  
4 of the process that we see going forward. And that is this,  
5 is the Greene plaintiffs have issued interrogatories and  
6 request for production of documents. We think they're  
7 completely overbroad and overbearing; and that's not before  
8 the Court today. But, nevertheless, I think the return date  
9 is April 16th. We certainly would suggest that the plaintiffs  
10 should be required to issue a 30(b)(6) notice to MtGox. The  
11 debtor is MtGox. The debtor is not Mark Karpeles. And it's  
12 improper for these parties to come forward and designate an  
13 individual that they want to testify on behalf of the company.  
14 That's the company's prerogative, and that's --

15 THE COURT: Okay. Why -- really, explain to me why  
16 is that improper? If he is the person who right now is the  
17 foreign representative, if he is the person who has filed all  
18 the declarations in support of MtGox's pleadings, why is that  
19 improper to focus on him personally?

20 MR. MITCHELL: Well, because, one, with respect to  
21 the declarations that he's filed, I agree. If somebody comes  
22 in and substitutes there may need to be an adoption or a  
23 replacement of those declarations. That may need to happen if  
24 there is a substitution. But if a company is requested to --  
25 basically, it's the debtor's right and the corporation's

1 right, under a 30(b)(6) deposition to choose who -- and it  
2 could be several individuals -- will testify with respect to  
3 the subject so designated. And that is MtGox's prerogative  
4 under 30(b)(6).

5 The deposition notice is issued, the subjects are  
6 identified, and then MtGox decides who will testify on behalf  
7 of MtGox, the debtor. And it's improper, simply because these  
8 plaintiffs want to depose an individual, for them to designate  
9 who will be the corporate representative. And that's what's  
10 going on here, Your Honor.

11 They should be first required to issue a deposition  
12 notice with the subjects, and then it is our right, under the  
13 rules, to identify who that witness should be. If they want  
14 go depose somebody on an individual basis, they can do that.  
15 But here with respect to what's going to happen on May 6th, or  
16 whenever this Court sets it for hearing, we should have the  
17 right to designate who will be providing that evidence.

18 If we put declarations on file, and we don't have the  
19 evidence to back that up at trial, that's something this Court  
20 takes up at trial. It's not something that this Court should  
21 use today in insisting that the deposition of Mr. Karpeles go  
22 forward in the United States.

23 THE COURT: All right. Mr. Phelan, I'll give you the  
24 last word on this.

25 MR. PHELAN: Your Honor, you zeroed in on it. MtGox,



1 M-T Gox, whatever they are, came to this Court, filed a  
2 Chapter 15, with a declaration of Mr. [CAR-pa-lay]  
3 [CAR-pa-less], whatever his name is. And he was -- they  
4 were -- MtGox, M-T Gox was granted provisional relief on  
5 extremely short notice of less than twenty-four hours, based  
6 on that declaration.

7 We don't have to do a 30(b)(6). This is a one-man  
8 band. Mr. Karpeles is MtGox. He is the foreign  
9 representative right now. We can speculate who might be one  
10 in the future, but that's speculation. We are entitled to  
11 take a deposition of the people that have the information  
12 necessary for us to determine what position we're going to  
13 take with respect to the recognition under Chapter 15. We may  
14 think it's a lousy idea when we get done; we may think it's a  
15 good idea, and we need it for the protection of our clients,  
16 which, essentially, are the United States clients, with the  
17 exception of Mr. Engel's client.

18 As a result, under 1510, the foreign representative  
19 is here, for this proceeding, and you have told us, in no  
20 uncertain terms, that the information that we can seek has to  
21 be related to this proceeding. Chicago is Chicago; I guess  
22 for Mr. Engel Seattle is Seattle. But this is a case here,  
23 and we're entitled to find out about assets, what conditions  
24 should be required, creditors, center of main interest, the  
25 stuff that relates to this proceeding. And that's what we're

1 going to do, and we're not going to go outside of that box,  
2 and if we go outside that box I'm sure that Mr. Mitchell will  
3 come and tell you -- this Court.

4 What's done in other cases, with respect to other  
5 situations, where you have Deloitte or Alix or somebody that  
6 is another foreign representative looking for six trucks in  
7 Arizona is a whole different animal and has no relationship to  
8 this case.

9 This guy is the witness. They want to bring in some  
10 other people who don't know anything for that final hearing,  
11 hey, let them do it, we'll deal with that at that point in  
12 time. But what we have in front of this Court is a  
13 declaration of Mr. Karpeles. He needs to come here, we need  
14 to find out if he's lying or not, we need to find out what's  
15 going on with respect to this Chapter 15 in that box; and  
16 that's what we're entitled to at this stage of the game.  
17 Thank you, Your Honor.

18 THE COURT: All right. Let me -- I'm going to order  
19 him to appear, but let me talk about timing now.

20 We're going to circle back to this May 6th date  
21 versus something else. But then Mr. Phelan, Mr. Woodrow, you  
22 have your motion to modify provisional relief, which, again, I  
23 told you I wasn't going to give you a substantive hearing on  
24 today; I would consider your request for an expedited hearing.

25 MR. PHELAN: Can I address that briefly?

1 THE COURT: You can. I mean, I guess what I'm  
2 starting to think is a deposition happens sometime in the next  
3 two or so weeks. Maybe we continue or set the hearing on the  
4 motion for provisional relief on May 6th. You may or may not  
5 be seeking some sort of provisional relief, depending on what  
6 you hear at the deposition. Same with CoinLab. And then I  
7 can consider it if you want to ask for some modification at  
8 that time. But then we're going to have the hearing on  
9 recognition sometime later than May 6th, it sounds like.  
10 That's kind of where this seems to be heading.

11 MR. PHELAN: You have -- we have a little problem  
12 here, and I think you're getting the picture today. On May  
13 (sic) 10th Karpeles on behalf of MtGox comes here, gets  
14 provisional relief on less than twenty-four hours notice to  
15 anybody.

16 THE COURT: March 10th.

17 MR. PHELAN: I'm sorry; March 10th.

18 THE COURT: Um-hum.

19 MR. PHELAN: Doesn't tell the Court that oh, by the  
20 way, I found a couple of hundred thousand bitcoins a couple of  
21 days ago, even in his declaration. Through the declaration,  
22 or through the attorneys, I don't remember which, or both,  
23 says well, the main asset in the United States is the server  
24 kind of thing, and data on this server, but I'm not going to  
25 tell you where it's at exactly, and I'm not going to tell you

1 what's on it. And gets the relief.

2 And today the relief is there, the provisional  
3 relief. And provisional relief isn't automatic. I mean,  
4 normally in a case the way that the Code's drafted is you file  
5 your petition for recognition, and when you are recognizing  
6 you get the relief unless you need it in the meantime. And if  
7 you need it in the meantime, you have to satisfy what,  
8 essentially, are temporary restraining order and preliminary  
9 injunction standards.

10 If you look at the record, what little there is of  
11 it, that hasn't really been done. Now, in a lot of cases it's  
12 not contested, it's no big deal, everybody kind of agrees on  
13 stuff, and it's granted. But that's not the case here. And  
14 that goes to our motion to terminate the provisional relief  
15 because they've had it for a month now based on, essentially,  
16 nothing. And it's less than nothing because what they told  
17 this Court, your colleague down the hall, turns out not to be  
18 true, or not to be accurate. It certainly isn't complete.

19 So I think that goes to the timing of setting our --  
20 setting this motion to terminate the provisional relief.  
21 Because they've kind of told you they -- well, maybe this  
22 Karpeles guy isn't going to be the foreign representative, and  
23 maybe he's not going to be here, and maybe nobody's going to  
24 be able to test him on the declaration that got the  
25 provisional relief. So to me that's the problem on the

1 timing.

2 And I'll defer to Mr. Woodrow with respect to what  
3 kind of makes sense from a discovery standpoint and a  
4 deposition standpoint and when we need to have -- what's the  
5 best time to have this done, because they moved it to May 6th.  
6 I'm sorry that the examiner over there isn't done by May 9th.  
7 But they shouldn't be able to just keep kicking out this  
8 provisional relief that was gotten on the basis of not very  
9 much.

10 THE COURT: Okay. Let's start at the back end.  
11 Instead of May 6th, what do you propose, Mr. Parham or Mr.  
12 Mitchell? And everyone else can weigh in, but if the report  
13 is going to be made on May 9th, does it make more sense to  
14 push the recognition hearing in this Court out to say, I don't  
15 know, middle of May, a week after that, two weeks after that?

16 MR. MITCHELL: Yeah. Your Honor, I think whatever  
17 works on your calendar, whether it's a week or two weeks. I  
18 think -- I don't see a reason for any kind of a lengthy gap.  
19 But I think probably a few days so the parties can react  
20 depending on what happens on May 9th in Tokyo.

21 THE COURT: Okay. So May 9th is a Friday. Is my  
22 trial week, Laura, the week of May 19th?

23 THE CLERK: Yes.

24 THE COURT: Okay. So I'll probably have some free  
25 days. But something in the week of May 19th, does anyone have

1 any opposition to me looking for a date the week of May 19th?

2 MR. MITCHELL: It's fine with us, Your Honor.

3 THE COURT: Okay.

4 MR. PHELAN: Yes, Judge.

5 THE COURT: That's good?

6 MR. PHELAN: Yes, Your Honor.

7 THE COURT: All right. CoinLab people, that good  
8 with you?

9 MR. ENGEL: Roger is that satisfactory to you? I'm  
10 asking my co-counsel, Your Honor.

11 THE COURT: Okay. Yeah. Mr. Townsend?

12 MR. ENGEL: Roger Townsend?

13 THE COURTCALL OPERATOR: Pardon the interruption.  
14 This is the CourtCall operator, Roger Townsend has  
15 disconnected.

16 THE COURT: Okay.

17 MR. ENGEL: Oh, well, then, Your Honor, I'll take  
18 responsibility. It's satisfactory.

19 THE COURT: All right. And U.S. Trustee, everything  
20 good with you on that week?

21 MS. LAMBERT: The Department of Justice is always  
22 available to you.

23 THE COURT: Okay. Well, let's hope so. Let me check  
24 with my courtroom deputy.

25 (Pause)

1 THE COURT: All right. Tuesday, May 20th at 9:30 is  
2 when we will --

3 MR. ENGEL: I'm sorry, Your Honor, I couldn't hear.

4 THE COURT: Tuesday, May 20th at 9:30 Central Time  
5 will now be the setting on the petition for recognition.

6 MR. ENGEL: Okay.

7 THE COURT: So we'll see whatever the report says  
8 from the examiner in Japan, and then that gives eleven or so  
9 days for people to digest that. So Tuesday, May 20th, 9:30.  
10 Now, so I'm thinking we'll give the Greene plaintiffs  
11 and CoinLab a setting on May 6th, what was going to be the  
12 hearing on the petition for recognition, on the motion to  
13 modify the provisional relief. All right? So you may or may  
14 not still want to argue that, I suppose, depending on what  
15 happens between now and May 6th. But if you want to argue  
16 that I should change what Judge Hale did -- and the way I look  
17 at it he didn't do a heck of a lot, he just said the automatic  
18 stay applies to MtGox, or he stayed the Illinois action and  
19 the Seattle action from going forward against MtGox only,  
20 right. And I guess the stay protects the servers, the  
21 receivable, whatever claim against the Department of Homeland  
22 Security, that's all we know about as being protected.

23 So, again, if you want to make an argument prior to  
24 May 20th, to modify the provisional relief order, that will be  
25 your time to do it, May 6th, was that at 9:30.

1 MR. PARHAM: I believe it was. Let's see, what was  
2 the --

3 MR. MITCHELL: It was, yes, Your Honor, 9:30.

4 THE COURT: Okay, so 9:30. All right. So now  
5 working backwards. Obviously, I know that we don't have Mr.  
6 Karpeles' consent on any of this, but if you want to weigh in  
7 on what may be good and what may be bad for him coming to the  
8 U.S., now would be the chance to do it, Mr. Parham and Mr.  
9 Mitchell. I mean, again, I don't have a feel for is he 24/7  
10 working with the supervisor, the examiner, what is going to  
11 be -- what we're going to be pulling him away from, what we're  
12 not. So I'll just let you weigh --

13 MR. ENGEL: Would you like to hear comments on that  
14 subject, Your Honor?

15 THE COURT: If you -- if you know something. I think  
16 Mr. Parham was getting up to address that. What do you want  
17 to say?

18 MR. ENGEL: Well, Your Honor, we haven't really  
19 talked about the other side of the Japanese process. But this  
20 is a situation where when the examiner wants something he asks  
21 for it. He doesn't simply allow Mr. Karpeles to run the show  
22 or run the investigation at all. And this is a situation  
23 where he's a Japanese official who's engaged in an important  
24 duty and he's going to do it his way. And he's not going to  
25 have Mr. Karpeles working every day for a month doing things.



1 I'm sure -- I would guess, just judging from past  
2 experience in these situations, that he's already gotten from  
3 Mr. Karpeles what he wants from Mr. Karpeles, apart from  
4 whatever new things Mr. Karpeles drops in to stall this, such  
5 as, oh, by the way, I've found some more coins. I mean, so --  
6 or I've got a buyer for the company, or the other usual things  
7 that debtors in his circumstance sometimes try to do to delay  
8 the proceedings.

9 Apart from investigating those kinds of things, I  
10 don't think there's a legitimate basis for Mr. Karpeles to say  
11 he can't be here, because he's got to be there doing  
12 investigations. I think if he's investigating, he's doing it  
13 for his own account, not for the examiner.

14 THE COURT: All right.

15 MR. PARHAM: Well, that's just complete speculation.

16 THE COURT: All right.

17 MR. PARHAM: My understanding is that Mr. Karpeles is  
18 extremely busy working towards whatever is going to happen to  
19 this company, whether it's going to be -- whether they're  
20 going to find to sponsor or rehabilitation, whether the  
21 exchange can be resurrected. I think the only thing, perhaps,  
22 that everybody doesn't disagree on today is that Mr. Karpeles  
23 is obviously very central to this company, and it's a very  
24 critical stage in the company's life.

25 We would suggest it be as late as possible to give

1 this as much time, frankly, and so that people who are  
2 operating from -- well, let me back up. We do think it should  
3 be later, not sooner. We have written discovery to us that is  
4 due, as Mr. Mitchell mentioned, I believe on April 16 or 17.  
5 Frankly, almost everything that is within the scope of what  
6 they want in this deposition is going to be responded to, I  
7 believe, in those interrogatories. So -- and in the request  
8 for production. So they're going to have a lot of this  
9 information in the next two and a half weeks anyway.

10 So our suggestion would be it be as late as possible.  
11 Frankly, I would like to see it around the May 6th date,  
12 because that is the date if he's got to come over here, if  
13 they're going to go forward on the motion to modify  
14 provisional relief then he's here, and could testify at that  
15 hearing as well, if necessary. As I said, I think they're  
16 going to have this information so I don't think it's going to  
17 prejudice them.

18 The other point I would make is, obviously, Mr.  
19 Karpeles we learned this morning, had hired his own counsel.  
20 So, obviously, while we'll -- we'll do what we can to have him  
21 here on any given date, we may run into an issue that way too.  
22 I don't know.

23 THE COURT: Okay. Are there any restrictions on his  
24 ability to travel? Somewhere in somebody's paper I saw some  
25 comment there may be. And I just don't know if that was

1 speculation, it turned out not to be correct, or what --

2 MR. PARHAM: Yeah -- no. I think there was some  
3 concern at one time that the Japanese court would not allow  
4 him to travel. I don't think that that is the case. Now,  
5 they may not pay for him to travel, that I think is possible.  
6 But there's no restriction, per se, from the Japanese court on  
7 whether or not he can travel.

8 THE COURT: Okay. All right, well --

9 MR. PHELAN: Your Honor --

10 THE COURT: What do you say about dates?

11 MR. PHELAN: Well, that kind of came out in stages  
12 about the travel. Because at first it was his travel  
13 restrictions, and then it was well, is it for real, well, it's  
14 not really, it's just money. So, okay, we'll pay for him to  
15 come here. So that's been -- their game's delay.

16 They suggested the written interrogatories, and  
17 you've been around the block, you know what those answers look  
18 like. That's not going to get us where we need to go, and I  
19 think we're over that hump.

20 If we're going to do something on the 6th then we  
21 really need to have the deposition well before that. And we  
22 would suggest it be sometime before April 21st.

23 THE COURT: Okay.

24 MR. PHELAN: That gives us a little bit of time  
25 before the 6th. And I just looked there's two nonstops from

1 Tokyo to Dallas on American alone, and there's other airlines  
2 that fly nonstop here. So it's not much fun to fly that far,  
3 but, hey, this dude does it all the time. That's -- and he's  
4 computer literate, he can do a lot of stuff with his little  
5 computer now from wherever he is in the world, because that's  
6 the business he ran.

7 THE COURT: Okay.

8 MR. PHELAN: So before April 21st is our request,  
9 Your Honor.

10 MR. ENGEL: We -- this is for CoinLab, Larry Engel.  
11 We join in that request for an early date.

12 THE COURT: Okay. Well, I'm going to say April 17th,  
13 or a date otherwise mutually agreed upon in writing by both  
14 the Greene plaintiffs' counsel, CoinLab counsel, and MtGox  
15 counsel. Okay. In the absence of a written agreement of all  
16 of you, we'll say April 17th, 9:30 in the morning, Dallas,  
17 Texas, offices of Baker & McKenzie. All right.

18 And I guess I'm going to be clear on the nature of my  
19 ruling. I'm granting, I guess, as modified, the motion of the  
20 Greene plaintiffs for an order pursuant to Rule 2004 and the  
21 joinder therein by the CoinLab plaintiffs. And what I mean by  
22 "as modified" is I'm granting the request to take the  
23 deposition of Mark Karpeles pursuant to the 7000 rules of  
24 discovery -- pursuant to Bankruptcy Rule 1018 and the 7000  
25 rules -- 7030, the other relevant 7000 rules, rather than

1 under 2004. I think you all understand, we've discussed that  
2 today. It's not really clear to me that 2004 applies in a  
3 Chapter 15 case before an order for recognition. But it is  
4 quite clear to me from Rule 1018 that parties-in-interest can  
5 take discovery that might be germane to whether an order for  
6 recognition should be issued.

7 So I am ordering that it be Mr. Karpeles. He has  
8 made himself a fact witness by signing the petition for  
9 recognition filed in this court, by submitting a detailed  
10 declaration in support of the petition for recognition, by  
11 holding himself out to this Court and the world, as the sole  
12 director and CEO or sole officer of MtGox Co., Ltd., also  
13 known as Mt. Gox KK. He appears to be the indirect eighty-  
14 eight percent owner. And, again, he availed himself to this  
15 Court asking this Court for relief on behalf of MtGox.

16 So with full recognition that he's not a U.S.  
17 citizen, that he is in Tokyo, Japan, that there may be a  
18 process of him being replaced at some juncture as the foreign  
19 representative of MtGox, I am still nevertheless ordering that  
20 he, as a fact witness, appear for a deposition April 17th,  
21 9:30 a.m. Central Time in Dallas, Texas for deposition.

22 Again, I've made it clear what the scope of this  
23 deposition is going to be. And I hope I don't have any  
24 motions for protective order, motions to compel, subsequent to  
25 this ruling. I think everyone in this room understands what

1 it is that I will need to consider on May 20th -- what did I  
2 say?

3 MR. MITCHELL: 17th.

4 THE COURT: May 20th for the hearing on recognition.

5 MR. MITCHELL: Okay, yeah.

6 THE COURT: And so, again: what are the company's  
7 assets in the U.S., in general; where are its creditors;  
8 questions germane to the main center of interest; and  
9 potentially questions that there are on the public policy  
10 issue; questions that may be germane to modifying or  
11 conditioning any order of recognition under 1522. But this is  
12 not an order permitting a Rule 2004 fishing expedition, and  
13 it's not an order allowing discovery germane to the Illinois  
14 action or the Seattle action. I am not allowing discovery for  
15 those actions.

16 All right. So questions, housekeeping matters before  
17 we adjourn?

18 MR. PARHAM: Your Honor, I assume that the  
19 objection --

20 MR. ENGEL: Oh, Your Honor, one question.

21 THE COURT: Just a minute. Just a minute.

22 Mr. Parham was just starting to ask something. Could you  
23 speak in the microphone so he hears you?

24 MR. PARHAM: Yeah. Your Honor, I would assume that  
25 the objection deadline, which has been basically floating the

1 week behind the -- or a week in front of the recognition  
2 hearing, rather, would just continue to move with the  
3 recognition hearing, such that the objection deadline would  
4 be, I guess, May 13th.

5 THE COURT: I think that's appropriate. Anyone have  
6 a problem with that? We'll make it May 13th then. All right.

7 Mr. Engel, you were saying?

8 MR. ENGEL: Your Honor, I'm just going to ask one  
9 question as to this process. As you know, proving foreign law  
10 is sometimes an expensive and complicated process. I don't  
11 know what the debtor's, or MtGox's plan is for how to deal  
12 with Japanese law questions, whether they're planning to put  
13 on an expert, or whether they're not. But we should know what  
14 they're planning to do, because that will inform us what we  
15 need to do in response to that. And Your Honor may then have  
16 views about whether there're alternatives as to how best to  
17 prove up foreign law on an inexpensive basis, for instance.

18 And we were talking earlier about Judge Mott's wild  
19 case in think3, and we had videotaped witnesses from offshore  
20 who were providing expert questions and answers to the court  
21 while we were -- but they also submitted reports -- expert  
22 reports. So I don't know if you want to do something like  
23 that, or whether the debtor is going to even trigger that.  
24 But we need to be able to respond to that if it arises,  
25 because filling up their papers with U.S. commentary about

1 Japanese law without it being proven is not a good idea.

2 THE COURT: All right. You have any thoughts on that  
3 yet, Mr. Parham?

4 MR. PARHAM: I think it's interesting that now they  
5 want to take a video deposition. But that aside, no. At this  
6 point it's something, obviously, we're giving some thought to,  
7 but I think it's something we should discuss probably with  
8 counsel outside the -- offline, as opposed to just debating it  
9 at the moment.

10 THE COURT: All right. Well --

11 MR. ENGEL: That's fine, Your Honor. The reason I  
12 bring it up now is that I don't want it to become an excuse  
13 for delay later. So let's have the meet-and-confer soon so  
14 that we can build it into the time process that you've set,  
15 Your Honor, because we don't want to move those dates.

16 THE COURT: All right. Well, I will order you to  
17 meet and confer on this in the next ten days. What is today,  
18 the 1st? By the close of business April 11th. And then if  
19 you don't have an agreeable process in writing then you can  
20 file a motion and ask me to, I don't know, order a court  
21 expert on this that you want to propose, or something of that  
22 nature.

23 MR. PARHAM: Your Honor, I think we've typically done  
24 this in past cases just by declarations from foreign counsel.  
25 I don't think that the Japanese law issues are going to be



1 subject to a whole lot of debate. And so I think what we'll  
2 propose, just so the Court kind of knows where we're going,  
3 would probably be exchange declarations. And if someone has  
4 an issue then we can kind of go from there as to what may need  
5 to happen. But I don't expect that to be a controversial  
6 topic, to be honest with you.

7 THE COURT: All right. What do you think?

8 MR. PHELAN: Your Honor, I have some summaries of  
9 Japanese law that I have access to. And I have a complete  
10 book on Japanese bankruptcy law from Hideyuki Sakai, who's a  
11 very prominent Japanese practitioner. It's only one problem,  
12 it's also in Japanese.

13 THE COURT: Oh, well, I don't know Japanese  
14 characters or language.

15 MR. PHELAN: I think we can work this out, Your  
16 Honor.

17 THE COURT: Thanks for that generous offer, though.

18 All right. Well, meet and confer by April 11th. And  
19 if you need the Court to order something, file a motion and  
20 I'll order something. But I'll assume you all are going to  
21 come in with an agreeable process if I haven't heard -- seen a  
22 motion.

23 All right, I'll look for your orders. Thank you.

24 MR. PARHAM: Thank you, Your Honor.

25 THE CLERK: All rise.

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MR. ENGEL: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 3:40 PM)

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C E R T I F I C A T I O N

I, Clara Rubin, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



April 3, 2014

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CLARA RUBIN

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